

CALIFORNIA COASTAL COMMISSION

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W-10c

April 11, 2001

TO: Coastal Commissioners and Interested Public

FROM: Peter M. Douglas, Executive Director
Sarah Christie, Legislative Coordinator

SUBJECT: LEGISLATIVE REPORT FOR April 2001

CONTENTS: This report provides summaries and status of bills that affect the Coastal Commission and California's Coastal Program as well as bills that staff has identified as coastal related legislation.

Note:

This information can be accessed through the Commission's World Wide Web Homepage at **www.coastal.ca.gov**

Please contact Sarah Christie, Legislative Coordinator, at (916) 445-6067 with any questions on the material contained in this report.

IMPORTANT LEGISLATIVE DATES

The California State Legislature re-convened on January 3, 2001. The California Coastal Commission is not sponsoring any bills this session.

April 5-16; Spring Recess

April 27; Last day for policy committees to meet and report, fiscal bills

May 11; Last day for policy committees to meet and report, non-fiscal bills

June 1; Last day for fiscal committees to report to Floor

June 8; Last day for bills to report out of house of origin

June 15; Budget must be passed by midnight

July 20-Aug 20; Summer Recess

Sept 14; Last day for each house to pass bills

Oct. 14; Last day for Governor to sign or veto bills

PRIORITY LEGISLATION

AB 62 (Migden) Sudden Oak Death Syndrome

This bill would appropriate \$10.265 million to the Department of Forestry and Fire Protection for the purpose of developing and implementing procedures for the control and management of Sudden Oak Death Syndrome (Phytopthera fungus). The Department would be required to assist local governments and property owners in identifying, removal and disposal of trees dying as a result of SODS. The bill would take effect immediately as an Urgency statute. This bill is identical to SB 31. (Analysis attached).

| | |
|--------------|---|
| Introduced | 12/04/00 |
| Last Amended | 2/27/01 |
| Status | Passed N.R.&W. Com; Referred to Senate Appropriations |

Commission Position **Staff recommends a Support position**

AB 104 (Nation) Coastal Conservancy, Motor Vehicle Mitigation Fund

This bill would authorize the Coastal Conservancy This bill would authorize the conservancy to establish the Motor Vehicle Mitigation Subaccount, for the acquisition of open space, and the protection, restoration, and enhancement of streams, creeks, wetlands and watersheds. The bill would impose a fee of up to \$4, to be collected by the Department of Motor Vehicles, upon the registration or renewal of registration of every motor vehicle registered in the county of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, or Sonoma for purposes of funding the account, should at least three of those counties choose to participate in the program. Ten percent of the funds collected would go to the Regional Water Quality Control Board to fund transportation-related water quality projects.

| | |
|--------------|-------------------------|
| Introduced | 01/12/01 |
| Last Amended | 03/20/01 |
| Status | Assm. Natural Resources |

AB 107 (Nation) Wrecks and Wrecked Property

This bill would amend the Harbors and Navigations Code to reduce by half the amount of time required to elapse before an abandoned or derelict vessel on public lands or tidelands within municipal or corporate jurisdiction may be sold. This bill would also triple the allowable amount of fee that can be against owners of derelict or abandoned vessels by a municipality or corporation. This bill would authorize removal of any vessel illegally moored for more than 72 hours when the vessel is docked without valid registration and deemed to be in an unseaworthy condition.

| | |
|--------------|---|
| Introduced | 01/16/01 |
| Last Amended | 03/26/01 |
| Status | Passed Assm. Transportation; Assm. Appropriations |

AB 388 (Strom-Martin) Oil Spill Prevention and Response: Marine Mammals

This bill would continuously appropriate \$125,000 per year for the purpose of training OSPR personnel and staff to respond to oil spills requiring the rescue of wildlife. It would also provide grants to the Marine Mammal Center for the removal, necropsy, study, and disposal of marine mammal carcasses whose death is caused by a toxic spill. The funds would be generated by fees already collected by the state from the sale of crude oil.

| | |
|------------|-------------------------|
| Introduced | 02/20/01 |
| Status | Assm. Natural Resources |

AB 556 (Jackson) Oil and Gas Development: Pipelines

AB 556 would amend Section 30262 of the Coastal Act to require that any new or expanded oil production extracted off the coast of California be transported by pipeline, rather than tanker or barge, to onshore

processing and refining facilities, and that all pipelines used to transport this oil utilize the best achievable technology to ensure maximum protection of public health and safety and productivity of terrestrial and marine ecosystems. In cases where overland transport by pipeline is infeasible, shipment of crude oil may be permitted by other modes of environmentally sound onshore transportation such as trains and trucks, which meet all applicable rules and regulations, excluding any waterborne mode of transport. (Analysis attached.)

Introduced 02/22/01
Status Assm. Natural Resources Committee
Commission Position Staff Recommends Support

AB 640 (Jackson) Coastal Resources: Certified Local Programs

This bill would amend Section 30519.5 of the Coastal Act, relating to Periodic Reviews of Local Coastal Programs. The legislative findings related to changed circumstances and out-dated LCPs direct the Commission and local governments to undertake, as expeditiously as possible, the review of previously certified LCPs and take corrective measures as necessary to ensure that implementation meets the goals and policies of the Coastal Act. The bill provides that if, after public hearings and notifications as prescribed in the bill, a local government elects not to amend its LCP as recommended by the Commission, the Commission may vote to:

- a) Not process any further amendments to the affected local coastal program until the local government takes the actions recommended by the Commission;
- b) Review on appeal any permits issued by the local Government;
- c) Review all appeals using the Chapter 3 policies of the Coastal Act, not the LCP as the standard of review.

The bill also requires the Commission to adopt non-regulatory guidelines no later than January 1, 2003, for purposes of implementation.

Introduced 02/22/01
Status Assm. Natural Resources Committee
Commission Position Support

AB 560 (Jackson) Storm Water

This bill would add Chapter 5.11 to the Water Code, requiring the state board to establish a storm water petroleum waste removal program. The bill would also direct the state board to provide grants to local public agencies to fund installation of devices for the removal of petroleum wastes from storm water drains, and direct the California Conservation Corps to assist with installation, where feasible.

Introduced 02/22/01
Status Assm. ESTM Committee

AB 759 (Shelley) Personal Watercraft: bans

This bill would allow any city or county to adopt an ordinance banning the use of personal watercrafts (jetskis) in any navigable waterway within the jurisdiction of the city or county. The bill would authorize fines of \$500 to \$1,500 for violation of the ordinance.

Introduced 02/22/01
Status Assm. Transportation

AB 960 (Keely) Crime Prevention

This bill would appropriate \$900,000 from the General Fund to continue funding the California District Attorneys Association's Environmental Circuit Prosecution Project, and to perform an evaluation of the project. The project has convened two multi-agency enforcement task forces on the North Coast, in which Coastal Commission participates. (Analysis Attached)

Introduced 02/23/01
Status Assm. Public Safety Committee
Commission Position Staff Recommends Support

AB 1011 (Pavley) County Assessors

This bill would require the county assessor in each county to develop a comprehensive index of conservation easements and deed restrictions on land in that county.

Introduced 02/23/01
Status Assm. Local Government Committee

AB 1108 (Pavley) Santa Monica Mountains: transfer of land

This bill would allow the Resources Secretary to directly acquire lands held by the State Controller, that have been identified by the Secretary as having significant statewide resource value, without an appropriation of state funds. The bill is limited to lands within the Santa Monica Mountains zone.

Introduced 02/23/01
Status Assm. Natural Resources Committee

AB 1145 (Jackson) Regional Open Space District: County of Ventura

This bill would allow the Ventura County Board of Supervisors to form a regional open space district by way of resolution, and to place the formation of the district on a ballot within the county of Ventura.

Introduced 02/23/01
Status Assm. Local Government Committee

AB 1172 (Keeley) Natural Community Conservation Planning

This bill would require the Department of Fish and Game, in three year intervals, to prepare and submit to the Legislature a report on the functioning and effectiveness of the NCCP Act. The report would include an evaluation of the functioning and effectiveness of the program, an inventory of NCCP plans underway or in the process of review, and the science being utilized in the preparation of those plans.

Introduced 02/23/01
Status Water Parks and Wildlife Committee

AB 1192 (Pavley) Water Quality and Watershed Protection Act of 2002

This bill would enact the Water Quality and Watershed Protection Act, authorizing the financing of the program through the sale of general issue bonds of an unspecified amount. The money would be used for grants and loans to local agencies to implement pilot projects for storm water quality improvement, water conservation and recycling, watershed restoration, nonpoint source pollution control and other specified water quality projects.

Introduced 02/23/01
Status Environmental Safety and Toxic Materials Committee

AB 1256 (Harman) Bolsa Chica

This bill would appropriate \$50 million to purchase 212 acres of land on the Bolsa Chica Mesa, in the county of Orange, within the coastal zone.

Introduced 02/23/01
Status Assm. Water Parks and Wildlife Committee

AB 1602 (Keely) Oak Woodlands

This bill would enact the Oak Conservation Act of 2001, administered by the Department of Forestry and Fire Protection. This is a spot bill.

Introduced 02/23/01
Status Assm. Natural Resources

SB 1 (Alpert) California Endowment for Marine Preservation

This bill would create the California Endowment for Marine Preservation, and the California Marine Resources Trust Fund, to be administered as proscribed by the bill. Both funds would receive a portion of the savings afforded to owner/operators of offshore oil and gas platforms, in the event they choose to participate in a "Rigs to Reefs" program, to be administered by the Department of Fish and Game, in consultation with the Commission, State Lands Commission, BCDC and Minerals Management Service. (Analysis attached.)

Introduced 01/04/00
Last Amended 03/01/01
Status N.R.&W. Committee

SB 31 (Chesbro) Sudden Oak Death Syndrome: Funding

This bill would appropriate \$10.265 million to the Department of Forestry and Fire Protection for the purpose of developing and implementing procedures for the control and management of Sudden Oak Death Syndrome (Phytophthora fungus). The Department would be required to assist local governments and property owners in identifying, remove and dispose of trees ding as a result of SODS. The bill would take effect immediately as an Urgency statute. This bill is identical to AB 64. (Analysis attached).

Introduced 12/04/00
Status Passed N.R.&W. Com; Referred to Senate Appropriations
Commission Position Staff recommends a Support position

SB 55 (Kuehl) City of Malibu Local Coastal Program

This bill would authorize the Commission to re-direct \$100,000 of Local Government Assistance Grant funds to reimburse the agency for costs associated with the preparation and certification of the city of Malibu's Local Coastal Program, consistent with the provisions of AB 988 (Hertzberg).

Introduced 12/21/00
Status Passed N.R.&W. Com., Passed Appropriations Com., Passed Senate Floor,
Assm. Natural Resources Committee

Commission Position Support

SB 107 (Sher) Natural Community Conservation Planning

This bill would repeal the Natural Community Conservation Planning Act of 1982, and replace it with the new Act. This bill would authorize the Department of Fish and Game to enter into agreements with local governments and private property owners for the purpose of allowing 'take' of species covered by the plan, subject to certain standards relating to collection of data, application of scientifically sound principles, and a process for public participation.

Introduced 01/22/01
Status N.R.&W. Committee

SB 116 (Kuehl) State Parks: roads, construction and improvement

This bill would prohibit the construction of roads by any state or local agency or from making any improvement to an existing road, that substantially increases vehicular traffic capacity, in or through any property under the jurisdiction of the Department of Parks and Recreation. (Analysis attached)

Introduced 01/24/01
Last Amended 03/20/01
Status Passed N.R. & W. Committee, Referred to Senate Appropriations

SB 124 (Johnson) Property Transfer

This bill would require the Department of Transportation to transfer a 15-acre parcel of open space from the Department of Transportation to the Department of Parks and Recreation, for a sum equal to the cost of acquisition. The parcel is located in the coastal zone adjacent to Pacific Coast Highway in the City of Newport Beach. The bill would authorize the state and the city to enter into an operating agreement for the purpose of managing the property as a public park.

Introduced 01/25/01
Last Amended 03/24/01
Status Governmental Organization Comm.

SB 516 (Johnson) Local Coastal Programs

This bill would allow the County of Orange to continue to implement the Irvine Coast LCP for that portion of the Irvine Coast which will be annexed by the City of Newport Beach. (Analysis attached)

Introduced 02/22/01
Last Amended 03/27/01
Status Senate Local Government

Commission Position Staff recommends a Neutral position

SB 908 (Chesbro) California Coastal Trail

This bill would require the Coastal Conservancy, in consultation with the Coastal Commission and the Department of Parks and Recreation, to develop a plan designating the primary hiking route and alternate routes for the trail, to estimate of costs of acquiring and developing the trail, and a description of where the trail might connect with existing, inland trail routes.

Introduced 02/23/01
Status N.R.&W. Com

SB 1164 (Sher) Local Coastal Programs: Costs

This bill would amend Section 30353 of the Public Resources Code to allow local governments to recover from the state costs incurred as a result of defending local actions pursuant to local coastal programs prior to the rendering of judgement if the Attorney General has intervened in support of the local government's position and the amount paid does not exceed \$500,000. Local governments would repay the state from any costs recovered as a result of final judgement. The bill would require the Director of the Commission, in consultation with the Attorney General, to establish procedures for the payment of litigation costs.

| | |
|------------|-------------------|
| Introduced | 02/23/01 |
| Status | N.R.&W. Committee |

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BILL ANALYSIS; SB 31 (Chesboro)**SUMMARY**

This bill would appropriate \$10.265 million over three years to the Department of Forestry and Fire Protection for the purpose of developing and implementing procedures for the control and management of Phytophthora fungus, which causes Sudden Oak Death Syndrome (SODS). The bill would take effect immediately as an Urgency statute.

PURPOSE OF THE BILL

The purpose of this bill is to require the Department to assist local governments and property owners in identifying, removal and disposal of trees dying as a result of SODS; to fund ongoing research into the cause and control of SODS; to conduct public education programs and to conduct aerial and on the ground inventories of affected populations.

EXISTING LAW

There is no existing law pertaining to Sudden Oak Death Syndrome. Some local governments have ordinances pertaining to native tree removal, mitigation and protection.

LEGISLATIVE HISTORY

This bill is one of three bills introduced this session to fund research and control of SODS. This bill tracks the language contained in AB 62 (Migden). AB 1602 (Keeley) is a spot bill.

BACKGROUND

Since 1995, coastal counties, including Santa Cruz, Marin, Monterey, Napa, Sonoma, San Mateo and Santa Clara have been reporting an alarming mortality rate in tanoak, coast live oak, and black oak trees and woodlands. These native species are generally distributed along the entire California and Oregon coast, and are key elements of several complex habitats in and outside of the coastal zone. Termed Sudden Oak Death Syndrome, or SODS, the exact nature and extent of SODS is not well understood. Pathologists have identified a new species of the fungus Phytophthora, as the likely causal agent for SOD, but numerous questions about this fungus and how it affects these species remain unanswered. Scientists consistently reiterate the point that the scope of the problem is unknown, but that it is likely to become more extensive. For example, additional ornamental species have recently been identified as hosts for the fungus, and the method of transport of SOD is not clearly understood. It is possible that the disease could migrate across the Central Valley into the Sierra Nevada foothills, or further north and/or south along the coast.

According to the California Oak Mortality Task Force, a working advisory committee comprised of scientists, academicians and agency representatives, the rapid dieback of oaks could cause several environmental changes. Woodland habitats will suffer unknown and possibly dramatic impacts to wildlife and habitat, and there will be a significant increase in the fire hazard risk from the buildup of dry fuel.

ANALYSIS

Sudden Oak Death Syndrome is currently limited to coastal counties, and it is found both in and out of the coastal zone. Coast live oak and tan oak are both species that are prevalent in central and northern California mixed oak woodlands. Thus, SODS will have a direct impact on these coastal zone resources. Although it may be argued that given enough time and genetic diversity the ecosystem will heal itself naturally, the fractured nature of the habitat and introduction of non-native species makes management essential.

This bill provides \$4,965,000 for grants to local governments for removal and disposal of hazard trees, restoration, mitigation, demonstration projects, monitoring workshops and other activities; \$2,000,000 for fire prevention; \$960,000 for research; \$820,000 for regulatory activities; and \$660,000 for education of homeowners, arborists, public works and utilities personnel and firefighters.

These funding recommendations come from the California Oak Mortality Task Force, a multi-agency task force comprised of federal, state, and local agency experts in SOD as well as scientists. Given the additional information gained since the bill was written, particularly in the area of newly identified host species, an augmentation to the amount of research funding may be warranted.

Grants to local governments for removal, disposal, mitigation and demonstration projects, will provide additional data from which to create policy and regulations for long-term management. Composting, co-generation and value-added products are all potentially viable alternatives which will be explored in the course of determining appropriate methods of disposal. However, the ecological role of dead and dying oak trees in the ecosystem should not be overlooked in the rush to remove hazard trees or reduce fuel loads. The Task Force recommends that wildland trees be left standing unless they pose a specific risk or nuisance.

SUPPORT/OPPOSITION

Support:

American Federation of State, County, and Municipal Employees, AFL-CIO, City of Novato, Marin County Board of Supervisors, Monterey County Board of Supervisors, Santa Cruz County Board of Supervisors, Solano County Board of Supervisors, Sonoma County Board of Supervisors

Opposition:

None on file

RECOMMENDED POSITION

Staff recommends the Commission **Support** SB 31.

LEGISLATIVE STAFF CONTACT

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BILL LANGUAGE ATTACHED

BILL NUMBER: SB 31 AMENDED

BILL TEXT

AMENDED IN SENATE FEBRUARY 22, 2001

INTRODUCED BY Senator Chesbro (*Coauthor: Senator McPherson*) (Coauthors: Assembly Members Nation and Wiggins)

DECEMBER 4, 2000

An act relating to oaks, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 31, as amended, Chesbro. ~~Oak Mortality Syndrome and Sudden oak death Syndrome~~ : appropriation.

(1) The Budget Act of 2000 appropriated funds to the Department of Forestry and Fire Protection to be used for various forestry programs throughout the state for the 2000-01 fiscal year.

This bill would appropriate the sum of ~~\$10,000,000~~ *\$10,265,000* to the department, for expenditure in the 2000-01, 2001-02, and 2002-03 fiscal years, *as specified*, in augmentation of a specified amount appropriated to the department for operating expenses in the Budget Act of 2000, to be used for a program to ~~identify, develop, and implement measures designed to address the public safety, environmental, and economic consequences of oak trees injured or killed by Oak Mortality Syndrome or Sudden Oak Death Syndrome, as prescribed. The bill would require that a minimum of \$5,000,000 of those funds be expended by the department for grants to counties for the removal, disposal, and treatment of affected oaks, based on a prioritization and assessment of needs conducted by the department~~ *develop and implement measures designed to prevent, control, and manage the condition known as "sudden oak death," and to perform control work on state and private lands within zones where sudden oak death is occurring, as determined by the State Board of Forestry and Fire Protection. This bill would require the department to use the funds appropriated to take various actions to control the spread of the Phytophthora fungus, to find effective treatments to prevent or eliminate sudden oak death, and to perform, or assist local agencies and private property owners to perform, identification, removal, and appropriate disposal of oak trees that have expired due to sudden oak death* .

(2) The bill would declare that it is to take effect immediately as an urgency statute. Vote: 2/3. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) (1) The sum of ~~ten million dollars (\$10,000,000)~~ *ten million two hundred sixty-five thousand dollars (\$10,265,000)* is hereby appropriated from the General Fund to the Department of Forestry and Fire Protection, for expenditure in the 2000-01, 2001-02, and 2002-03 fiscal years, in augmentation of Item ~~3540-006-0001~~ *3540-001-0001* of Section 2.00 of the

Budget Act of 2000, ~~to be used for a program to identify, develop, and implement measures designed to address the public safety, environmental, and economic consequences of trees injured or killed by Oak Mortality Syndrome or Sudden Oak Death Syndrome.~~ (b) Not less than five million dollars (\$5,000,000) of the funds allocated pursuant to subdivision (a) shall be expended by the department for grants to counties for the removal, disposal, and treatment of affected oaks, based on a prioritization and assessment of needs conducted by the department. The department shall give funding priority to grants to counties where Oak Mortality Syndrome and Sudden Oak Death Syndrome have been ~~to be used to develop and implement measures designed to prevent, control, and manage the condition known as "sudden oak death," and to perform control work on state and private lands within zones where sudden oak death is occurring, as determined by the State Board of Forestry and Fire Protection.~~

(2) *The department shall use the funds appropriated pursuant to this subdivision to take various actions to control the spread of the Phytophthora fungus, to find effective treatments to prevent or eliminate sudden oak death, and to perform, or assist local agencies and private property owners to perform, identification, removal, and appropriate disposal of oak trees that have expired due to sudden oak death.*

(3) *The funds appropriated in this subdivision shall be allocated as follows:*

(A) *Six hundred twenty thousand dollars (\$620,000) for sudden oak death monitoring activities including, but not necessarily limited to, open-space surveys, roadside surveys, aerial surveys, monitoring technique workshops, development of baseline information on the distribution, condition, and mortality rates of oaks in California, and maintaining an up-to-date geographic information system database.*

(B) *Four million nine hundred sixty-five thousand dollars (\$4,965,000) for sudden oak death management activities, including, but not necessarily limited to, hazard tree assessment, grants to counties for hazard tree removal pursuant to the process established in subdivision (b), assessment and management of restoration and mitigation options, establishment of demonstration management projects, including green waste treatment facilities in two counties selected by the State Board of Forestry and Fire Protection, and grants to counties for oak tree restoration pursuant to the process established in subdivision (c). The department shall give funding priority to grants to counties where sudden oak death has been confirmed by the department, including, but not limited to, the Counties of Marin, Monterey, Napa, San Mateo, Santa Cruz, Santa Clara, and Sonoma. However, other counties shall also be eligible for grants, based on the department's prioritization and assessment of needs, if the department determines that ~~Oak Mortality Syndrome or Sudden Oak Death Syndrome~~ sudden oak death affects oaks in any of those counties.*

(C) *Two million dollars (\$2,000,000) for fire prevention activities, including, but not necessarily limited to, increasing or improving initial fire attack capabilities in areas where fire hazard has increased due to the die-off of oak trees stricken by sudden oak death, treatment of vegetation to prevent fire, and assessment of fire risk in heavily impacted areas.*

(D) *Nine hundred sixty thousand dollars (\$960,000) for research activities, including, but not necessarily limited to, research on forest pathology and Phytophthora ecology, forest insects associated with oak decline, urban forestry and arboriculture, forest ecology, fire management and silviculture, and landscape ecology, epidemiology, and monitoring techniques.*

(E) Six hundred sixty thousand dollars (\$660,000) for education activities, including, but not necessarily limited to, support for two education project coordinators, website design and maintenance, and development and distribution of education materials on sudden oak death for homeowners, arborists, urban foresters, park managers, public works personnel, utility crews, recreationists, nursery workers, landscapers, naturalists, and firefighting personnel.

(F) Eight hundred twenty thousand dollars (\$820,000) for regulation activities, including, but not necessarily limited to, nursery surveys and other regulation enforcement activities, diagnostic services, and other public agency coordination efforts.

(G) Two hundred forty thousand dollars (\$240,000) for administrative activities necessary to oversee the activities listed in subparagraphs (A) to (F), inclusive.

(b) The State Board of Forestry and Fire Protection shall grant a portion of the funds allocated pursuant to subparagraph (B) of paragraph (3) of subdivision (a) to impacted counties for the removal of trees that have died or that are dying as a result of sudden oak death. An impacted county may apply to the board for these funds, and shall provide the board with an action plan for removal and disposition of affected trees within its jurisdiction. The board shall approve or deny an affected county's action plan in a timely manner. If the board approves the action plan of an affected county, the board may award a grant to that county. The board shall consider the recommendations of the California Oak Mortality Task Force prior to approving or denying any county action plan, and prior to making any grant award, under this subdivision.

(c) The State Board of Forestry and Fire Protection shall grant a portion of the funds allocated pursuant to subparagraph (B) of paragraph (3) of subdivision (a) to impacted counties for activities designed to restore oak trees in areas that have been impacted by sudden oak death. An impacted county may apply to the board for these funds, and provide the board with an action plan for restoration of affected trees within its jurisdiction. The board shall approve or deny an affected county's action plan in a timely manner. If the board approves the action plan of an affected county, the board may award a grant to that county. The board shall consider the recommendations of the California Oak Mortality Task Force prior to approving or denying any county action plan, and prior to making any grant award, under this subdivision.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

~~—In order to provide needed funds to counties in the state to address the immediate hazards caused by Oak Mortality Syndrome and Sudden Oak Death Syndrome throughout the state, it is necessary that this act take effect immediately.~~

In order to provide funding, at the earliest possible time, to prevent, control, and manage the rapidly spreading condition known as "sudden oak death," it is necessary that this act take effect immediately.

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BILL ANALYSIS; AB 556 (Jackson)**SUMMARY**

This bill would amend section 30262 of the Coastal Act relating to oil and gas development. The amendment establishes a process for ensuring the safe transport of oil extracted from offshore sources using “best achievable technology,” if that oil is considered to be “new or expanded.” The terms “best achievable technology” and “new or expanded” are defined in the bill.

This bill requires that, where new oil and gas development is permitted offshore, all of that oil will be transported to onshore processing facilities by pipeline only, and all pipelines used to transport this oil will utilize the best achievable technology to ensure maximum protection. The bill provides a limited exception where the crude oil is so highly viscous that pipelining is infeasible.

The bill further provides that when an offshore well is abandoned or permanently shut down, the best achievable technology shall be used to seal and cap a well to prevent any further failure or leakage of oil from the well into the marine environment.

PURPOSE OF THE BILL

The purpose of this bill is to require all new or expanded offshore oil production to be transported via pipeline, rather than by tanker or barge, and to require that the best achievable technologies be used in construction of pipelines and capping of wells.

EXISTING LAW

The Coastal Act (Division 20 of the Public Resources Code) regulates development within the Coastal Zone, including state waters out to three miles. The Commission has permit jurisdiction over new offshore oil and gas development within the Coastal Zone. Section 30262 of the Coastal Act requires that the Commission approve oil and gas development if certain conditions are met. This provision currently does not require that new facilities use pipelines to carry oil to the shore or to refineries. Tankers and other modes of transportation are allowable. There is no requirement that pipelines use best available technology.

LEGISLATIVE HISTORY

This is a reintroduction of AB 1280, introduced by the same author in the 1999-00 legislative session. The Commission supported AB 1280.

BACKGROUND

The California Coastal Act states that pipelining oil is a more environmentally and economically feasible method of transport but does not specifically mandate the use of pipelines. Because the law is not explicit, some tankering/barging of oil still occurs off of California's coast.

Regulatory authority over the drilling and transport of crude oil and construction and maintenance of pipelines is shared between the Minerals Management Service, the Army Corps of Engineers, the State Fire Marshall, State Lands Commission, the Division of Oil, Gas and Geothermal Resources and local air boards as well as the Commission. The California Department of Fish and Game Office of Spill Prevention and Response regulates and coordinates emergency oil spill response.

ANALYSIS

The majority of oil extracted offshore along the California coast is already transported to shore or refinery via pipeline. This bill would most directly affect a single company, Venoco, which is planning to increase development from platform Holly off the Santa Barbara coast. Venoco currently transports its crude oil via barge, and is planning to expand production. Although this bill would only require Venoco to construct a pipeline to handle the new or expanded production levels, the practical effect would be that all crude would be transported via pipeline, once constructed.

While pipelining of oil from an off-shore platform to an on-shore site is not without risk, the League for Coastal Protection states that eight of nine of California's most serious oil spills were tanker related rather than pipeline related. Requiring oil transport to shift from barge to pipeline will reduce the chances of an accidental spill.

Requiring that the best achievable technology be utilized in both the construction of new pipelines and the capping of wells will further reduce the chance of spills. Although the Commission and other permitting agencies currently have the discretion to impose such requirements, a clear legal mandate to do so will add clarity to the permitting process. The definition of "best achievable technology" in the bill is cited directly from the Government Code. The Coastal Commission retains the ability to determine if the standard as defined is being met.

SUPPORT/OPPOSITION

Support:

None on file

Opposition:

Western States Petroleum Association

RECOMMENDED POSITION

Staff recommends the Commission **Support** AB 556.

LEGISLATIVE STAFF CONTACT

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BILL LANGUAGE ATTACHED

BILL NUMBER: AB 556

BILL TEXT

INTRODUCED BY Assembly Member Jackson

FEBRUARY 21, 2001

An act to amend Section 30262 of the Public Resources Code, relating to oil and gas.

LEGISLATIVE COUNSEL'S DIGEST

AB 556, as introduced, Jackson. Oil and gas development: pipelines.

The existing California Coastal Act of 1976 permits oil and gas development, if specified conditions relating to safety and environmental mitigation are met.

This bill would include, within those specified conditions that are required to be met where oil and gas development is permitted, a condition requiring that all oil produced offshore be transported to onshore processing facilities by pipeline only, and that all pipelines used to transport this oil utilize the best achievable technology, as defined, to ensure maximum protection of public health and safety and of the integrity and productivity of terrestrial and marine ecosystems. However, for new or expanded oil extraction operations where the crude oil is so highly viscous that pipelining is found to be an infeasible mode of transportation, or there is no feasible access to pipeline, the bill would permit shipment of crude oil over land by other modes of transportation such as trains and trucks that meet all applicable rules and regulations, excluding any waterborne mode of transport. This bill would further require that, in addition to all other measures that will maximize the protection of marine habitat and environmental quality, when an offshore well is abandoned or permanently shut down, the best achievable technology be used to seal and cap a well to prevent any further failure or leakage of oil from the well into the marine environment.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 30262 of the Public Resources Code is amended to read:

30262. (a) Where oil and gas development is permitted the following conditions shall be met:

(1) The development is performed safely and is consistent with the geologic conditions of the well site.

(2) New or expanded facilities related to that development are consolidated, to the maximum extent feasible and legally permissible, unless consolidation will have adverse environmental consequences and will not significantly reduce the number of producing wells, support facilities, or sites required to produce the reservoir economically and with minimal environmental impacts.

(3) Environmentally safe and feasible subsea completions are used if drilling platforms or islands would substantially degrade coastal visual qualities, unless use of those structures will result in substantially less environmental risks.

(4) Platforms or islands will not be sited where a substantial hazard to vessel traffic might result from the facility or related operations determined in consultation with the United States Coast Guard and the Army Corps of Engineers.

(5) The development will not cause or contribute to subsidence hazards unless it is determined that adequate measures will be undertaken to prevent damage from such subsidence.

(6) With respect to new facilities, all oilfield brines are reinjected into oil-producing zones, unless the Division of Oil and Gas of the Department of Conservation determines to do so would adversely affect production of the reservoirs, and unless injection into other subsurface zones will reduce environmental risks. Exceptions to reinjections will be granted consistent with the Ocean Waters Discharge Plan of the State Water Resources Control Board and where adequate provision is made for the elimination of petroleum odors and water quality problems.

(7) All oil produced offshore California shall be transported to onshore processing facilities by pipeline only. The pipelines used to transport this oil shall utilize the best achievable technology to ensure maximum protection of public health and safety and of the integrity and productivity of terrestrial and marine ecosystems.

(8) Once it is onshore, all oil produced offshore shall be transported to refining facilities by pipeline. The pipelines used to transport this oil shall utilize the best achievable technology to ensure maximum protection of public health and safety and of the integrity and productivity of terrestrial and marine ecosystems.

(9) The following guidelines shall be used when applying paragraphs (7) and (8):

(A) The term "oil" shall refer to crude oil before it is refined into products such as gasoline, bunker fuel, lubricants, and asphalt.

Crude oil that is upgraded in quality through residue reduction or other means shall be transported as provided in paragraphs (7) and (8).

(B) The term "best achievable technology," means the technology that provides the greatest degree of protection taking into consideration:

(i) Processes that are being developed, or could feasibly be developed anywhere in the world, given overall reasonable expenditures on research and development.

(ii) Processes that are currently in use anywhere in the world.

In determining what is best achievable technology, the State Lands Commission, the State Fire Marshal, or the Division of Oil, Gas, and Geothermal Resources in the Department of Conservation, as appropriate depending on each agency's respective jurisdiction, shall consider the effectiveness and engineering feasibility of the technology.

(C) Paragraphs (7) and (8) shall apply only to new or expanded oil extraction operations. New extraction operations means production of offshore oil from leases that did not exist or had never produced oil, as of January 1, 2002, or from platforms, drilling islands, subsea completions or on shore drilling sites, that did not exist as of January 1, 2002. Expanded oil extraction means an increase in the geographic extent of existing leases or units, including lease boundaries or adjustments, or an increase in the number of wellheads, on or after January 1, 2002.

—(C)

(D) For new or expanded oil extraction operations referred to in paragraph (8), where the crude oil is so highly viscous that pipelining is found to be an infeasible mode of transportation, or there is no feasible access to a pipeline, shipment of crude oil may be permitted over land by other modes of transportation, such as trains or trucks, which meet all applicable rules and regulations, excluding any waterborne mode of transport.

—(D)

(E) For the purposes of this paragraph, best achievable technology shall be determined by the commission, in consultation with the administrator for oil spill response, the State Lands Commission, or the State Fire Marshal or the Division of Oil, Gas, and Geothermal Resources in the Department of Conservation, in accordance with applicable state law. This subparagraph is not intended to create any conflicting or duplicative regulations governing pipelines.

(10) If a state of emergency is declared by the Governor for an emergency that disrupts the transportation of oil by pipeline, oil may be transported by a waterborne vessel, if authorized by permit, in the same manner as required by emergency permits that are issued pursuant to Section 30624.

(11) In addition to all other measures that will maximize the protection of marine habitat and environmental quality, when an offshore well is abandoned or permanently shut down, the best achievable technology shall be used to seal and cap a well to prevent any further failure or leakage of oil from the well into the marine environment. For the purposes of this paragraph, best achievable technology, as defined in Subparagraph (B) of paragraph (9), shall be determined by the commission, in consultation with the administrator for oil spill response, the State Lands Commission, and the Division of Oil, Gas, and Geothermal Resources in the Department of Corrections, in accordance with applicable state law. This paragraph is not intended to create any conflicting or duplicative regulations governing pipelines.

(b) Where appropriate, monitoring programs to record land surface and near-shore ocean floor movements shall be initiated in locations of new large-scale fluid extraction on land or near shore before operations begin, and shall continue until surface conditions have stabilized. Costs of monitoring and mitigation programs shall be borne by liquid and gas extraction operators.

(c) Nothing in this section shall affect any right, duty, or obligation prescribed by any other statute of any state agency that is responsible for regulating the extraction, production, or transport of oil and gas.

SEC. 2. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

CALIFORNIA COASTAL COMMISSION

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BILL ANALYSIS; AB 960 (Keeley)**SUMMARY**

This bill would provide additional funding for the California District Attorneys Association's Environmental Circuit Prosecutor Project to continue the ongoing work of that project.

PURPOSE OF THE BILL

The purpose of this bill is to provide funding to the Office of Criminal Justice Planning for an evaluation of the ECP project, and to allow the project to cover its ongoing expenses while the evaluation is being conducted.

EXISTING LAW

The Environmental Circuit Prosecutor Project coordinates the enforcement of existing environmental laws including the Coastal Act, Clean Water Act, Clean Air Act, Endangered Species Act, California Environmental Quality Act, and local ordinances.

LEGISLATIVE HISTORY

This three-year pilot program was authorized as a line item in the Governor's Budget Act of 1997-98, under the Environmental Protection Agency, Item 0555.

BACKGROUND

The California Environmental Prosecutor Project was established to provide experienced environmental attorneys to rural California counties which lack the resources to hire full time environmental prosecutors. Circuit prosecutors analyze and prepare cases presented by state and county agencies, and prosecute violators under the supervision of the California District Attorney. In the three years since the program's inception, the project has processed over 500 environmental cases and collected nearly \$4 million in fines.

One of the programs developed under the project is the County Environmental Task Forces. These groups meet monthly to coordinate enforcement cases and activities. They are made up of representatives from the Department of Fish and Game, California Highway Patrol, California Department of Forestry, City and County Planning Departments, and, in coastal counties, the California Coastal Commission. Commission staff currently participate on Environmental Task Forces in Humboldt and Del Norte Counties.

The purpose of these task forces is to coordinate and support environmental enforcement cases, identify which agency is best suited as lead agency, and elevate cases to a higher degree of priority within other affected agencies.

ANALYSIS

Coastal Commission staff representatives on the task forces report that the work of the group is extremely helpful in identifying, tracking and prosecuting environmental enforcement cases. While Commission representation on the North Coast task forces is relatively recent, they are patterned after the Santa Monica Mountains Enforcement Task Force which has a well-established history of being highly effective in successfully addressing Coastal Act violations in that region. Without

continued funding, the task forces will be disbanded. The result would be less coordination between enforcement agencies, reduced effectiveness at prosecuting environmental violators, and lost opportunities to strengthen inter-agency cooperation.

SUPPORT/OPPOSITION

Support:

None on file

Opposition:

None of file

RECOMMENDED POSITION

Staff recommends the Commission **Support** AB 960.

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BILL LANGUAGE ATTACHED

BILL NUMBER: AB 960

BILL TEXT

INTRODUCED BY Assembly Member Keeley

FEBRUARY 23, 2001

An act relating to crime prevention, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 960, as introduced, Keeley. Crime prevention: environmental prosecution project.

Under existing law, various programs are established in the Office of Criminal Justice Planning (OCJP) and administered by that office.

This bill would authorize OCJP to administer the California District Attorneys Association's Environmental Circuit Prosecutor Project.

The bill would appropriate \$900,000 from the General Fund to the Office of Criminal Justice Planning for the purpose of funding this project as well as administering, and performing a complete evaluation of, the project.

Vote: 2/3. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature to continue the effective enforcement of environmental crime in California's rural counties through the California District Attorneys Association's Environmental Circuit Prosecutor Project.

SEC. 2. (a) The sum of nine hundred thousand dollars (\$900,000) is appropriated from the General Fund to the Criminal Justice Planning for allocation to the California District Attorneys Association to continue funding the Environmental Circuit Prosecutor Project.

(b) Up to 5 percent of the amount appropriated pursuant to this section shall be transferred, upon the approval of the Director of Finance, to the Office of Criminal Justice Planning to administer, and complete an evaluation of, the program described in this section.

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BILL ANALYSIS; SB 1 (Alpert)**SUMMARY**

S.B. 1 would create the California Endowment for Marine Preservation, a permanent funding source for projects which conserve, protect, restore and enhance the state's coastal marine resources, governed by a board of directors appointed by the Governor. The bill would also create the California Marine Resources Trust Fund, with the Secretary for Resources and the Director of the Department of Fish and Game serving as trustees for the fund. Both the endowment and the fund would receive their funding primarily from a portion of the savings afforded to owners/operators of de-commissioned oil and gas platforms which are allowed to all or part of their platforms in place, rather than removing them upon expiration of their leases. (Also known as "Rigs to Reefs").

Once permitted, the areas surrounding the rigs would be off limits for fishing and other extractive activities with the exception of permitted research activities.

PURPOSE OF THE BILL

The purpose of the bill is to:

Allow oil companies to realize cost savings by leaving offshore oil and gas structures in place, rather than bear the full cost of removal as specified in their individual lease agreements;

Provide a permanent source of funding to support projects which conserve, restore and enhance marine resources;

Create a funding source for marine-related activities within the Department of Fish and Game;

Conserve existing marine resources associated with offshore oil and gas platforms.

LEGISLATIVE HISTORY

This bill is the re-introduction of SB 241, introduced by the author during the 1999-2000 session. SB 241 was withdrawn by the author after substantial changes suggested by the Department of Fish and Game were met with opposition by environmental groups at the end of session.

EXISTING LAW

State waters extend three miles seaward from the mean high tide line. Federal waters extend from 3 to 12 miles and the United States Exclusive Economic Zone extends from 12 to 200 miles. (The Outer Continental Shelf, or OCS is the submerged land in federal waters). The removal of de-commissioned oil and gas rigs is controlled by the specific language contained in the state and/or federal leases that apply to them and, where applicable, Coastal Commission approvals. While some leases require complete removal, others include options for leaving portions in place, or defer the applicable environmental and engineering constraints to the time of removal.

Decommissioning and removal of oil rigs in either state or federal waters is subject to regulatory review by the California Coastal Commission. The federal Coastal Zone Management Act (CZMA) subjects any federal activity (i.e. federal permits or authorization to remove platforms) that affects coastal resources to review by the commission for consistency with the state's Coastal Management Program (i.e., the Coastal Act). The Commission has fairly broad regulatory discretion to approve, deny, or approve with modifications a request to remove all or part of an offshore platform in state or federal waters.

The Army Corps of Engineers, Environmental Protection Agency, National Marine Fisheries Service and the Minerals Management Service have jurisdiction over OCS platform issues. The California Department of Fish and Game regulates the creation, placement and maintenance of artificial reefs in state waters by administration of the California Artificial Reef Program (CARP).

This bill does not supercede any existing regulatory authority of any federal, state or local agency. This bill does not relieve the prior owner or operator of the oil rigs from any continuing liability associated with seepage or release of oil into the marine environment. The bill does not address liability issues associated with personal injury or loss associated with future use.

PROGRAM BACKGROUND

Offshore oil and gas platforms in state and federal waters have become defacto habitat for many species of fish and invertebrates. As these platforms approach the end of their productive years, and the leases authorizing their operations expire, the companies that own them must initiate the process of "decommissioning." This involves capping the wells and removing the platforms. The pilings supporting the platform structures must also be removed, or cut off at a depth that does not pose a risk to vessels. The California Coastal Commission must issue Coastal Development Permits (CDPs) for all decommissioned platforms in state and federal waters under jurisdiction provided under the California Coastal Act and the federal Coastal Zone Management Act. The Minerals Management Service (MMS) estimates that the federal government does not expect to decommission any platforms before 2005.

Commercial fishers and some environmental groups support the complete removal of all structures upon decommissioning. Commercial fishers feel that partial removal poses a hazard to their vessels and equipment, particularly nets and trawling devices. Environmental groups feel that leaving portions of the rigs in place produces a constant pollution source as structures decompose, contributes to the unnatural littering of the ocean floor, and may attract species to gather in areas which cannot actually sustain healthy, reproducing populations.

Oil companies, sports fishers, recreational divers and some members of the scientific community argue that the submerged portions of the rigs should be left in place. While no oil companies have gone on record in support of S.B. 1, the industry has been actively promoting the concept of Rigs to Reefs. Leaving the pilings in place would result in substantial savings to oil companies. Sports fishers point out that complete removal of the pilings results in the loss of marine species and habitat. Biological inventories indicate a high concentration and diversity of species are present in the vicinity of some, but not all, of the platforms.

While expert opinions have been offered on both sides of the issue, conclusive scientific evidence supporting the actual habitat value of offshore oil rigs in comparison to intentionally built artificial reefs or undisturbed reef structures has been lacking in this debate. The Coastal Commission has been participating since 1997 in an interagency decommissioning working group comprised of federal, state and local government agencies with regulatory interest in a variety of decommissioning issues. Public workshops, along with recognition on the part of the working group that better science was needed to address the question of converting oil rigs to artificial reefs in part led to the formation of the Select Scientific Advisory Committee on Decommissioning. Convened under the auspices of the University of California, this is a panel of marine biologists and research scientists who are looking specifically at the habitat value of these artificially created ecosystems. The advisory committee released the initial draft of their last December will be submitted in the summer of 2000. It may or may not contain conclusions or specific recommendations, pending further research.

ANALYSIS

S.B. 1 does not call for the creation or implementation a Rigs to Reefs program. Rather, S.B. 1 seeks to create the mechanism by which any future funds generated by decommissioning through savings to owners may be collected, administered and expended. If no platforms are allowed to remain in place, no funds will be collected from this source. The bill does not favor any particular method of abandonment, nor does the bill limit or affect the authority of the Commission nor any federal, state or local agency with regulatory authority or planning oversight of offshore oil platforms.

However, the creation of an endowment fund and the trust fund in the absence of conclusive scientific evidence supporting the biological impacts of rig abandonment, could create expectations on the part of industry and interest groups. Combined with the substantial incentive provided to industry, it is not unreasonable to assume that once the endowment and the fund are created, pressure will be brought to bear on regulatory agencies, including the commission, to approve such conversions. This, in turn, could set up conflicts with existing guidelines pertaining to the location and creation of artificial reefs. Section 6421 of the Fish and Game Code currently defines artificial reefs as:

“...manmade or natural objects intentionally placed in selected areas of the marine environment to duplicate those conditions that induce production of fish and invertebrates on natural reefs and rough bottoms, and that stimulate the growth of kelp or other midwater plant life which creates natural habitat for those species.”

Clearly, location and material for constructing offshore platforms were chosen for the suitability of oil and gas extraction, not for enhancing underwater ecosystems. A 1995 study conducted by DFG on 5 artificial reefs in the San Diego area reaffirmed previous determinations by the department that metal structures (in this case, sunken vessels) are less suitable than other materials for artificial reef habitat, and support less diversity than other types of reefs. While the bill specifies that decommissioned rigs converted to artificial reefs must benefit marine resources, comply with water quality laws and navigational safety, any change in current policy on the criteria for placement and construction of artificial reefs should occur only after rigorous scientific review.

S.B. 1 also raises questions outside the scope of the Coastal Commission's purview. The issue of the state's potential liability for maintenance and legal exposure resulting from personal claims and potential environmental impacts should be reviewed.

OTHER STATES' INFORMATION

All five gulf states (Texas, Louisiana, Florida, Mississippi and Alabama) have rigs to reefs programs. These programs relocate the structures rather than leaving them in place, which adds significantly to the cost of conversion, and reduces the amount available to the state. While rigs to reefs has enhanced recreational use in the Gulf, it has not provided substantial economic benefits. A typical conversion nets \$25,000 to \$300,000 to the state. As of fy 1999-2000, Louisiana had received a total of \$5.1 million from 36 conversions. Texas has received \$2.5 million. It should be noted that ocean conditions in the Gulf are different than those off the coast of California, (many rigs are in extremely shallow depths, the bottom is primarily sandy, etc.) thus the comparison is not entirely analogous.

FISCAL IMPACT

Cost savings to the owner or operator of a platform or facility from partial removal would be calculated and accrue to the state as follows:

35% of the cost for total removal from facilities in water less than 200 feet in depth, 50% of the cost for total removal if the facility is in water between 200-400 feet of water, and 65% of the cost for total removal if the facility is in water greater than 600 feet in depth. An unspecified percentage of these funds would be deposited in the trust fund, the endowment and directly with county governments adjacent to the decommissioned rigs.

The formula for calculating the funds paid to the state affords the greatest percentage of savings to the platforms most likely to be proposed as reefs. The majority of platforms (12) are located in waters less than 200 feet. These would generate for the state only 35% of the total cost of removal, affording a 65% savings to the owner/operator. As shallow depths harbor greater species diversity and have the highest recreational value, it is likely that these platforms would be the most desirable for the Rigs to Reefs program. Requiring a greater percentage of savings to the state for shallow rigs would be more fiscally beneficial for the state.

ECONOMIC IMPACT

Exact economic benefits to the state or local governments cannot be calculated with assurance, as estimates for the cost of rig removal vary widely, and the bill does not yet proscribe the percentages for distribution.

SUPPORT/OPPOSITION

Support:

None on file

Opposition:

None on file

ARGUMENTS

Pro: The quality of California's marine environment and the diversity of fisheries it supports continues to decline. More funding is needed for marine research and projects which preserve and restore critical habitat and natural resources. The research and projects funded by the California Endowment for Marine Preservation would benefit the state by preserving and enhancing marine resources.

While the biological sustainability of this type of artificial reef has not yet been quantified, one positive effect of leaving them in place is not in dispute. Trawl fishing, extremely disruptive to benthic ecosystems and indiscriminate in its take of targeted and non-targeted species, is not feasible within a certain radius of these structures. Thus, the ocean floor remains undisturbed in the vicinity of these structures.

CON: S.B. 1 may be premature. Both MMS and the State Lands Commission estimate that no oil rigs will be decommissioned before 2005. The habitat viability of offshore platforms is questionable. If S.B. 1 is enacted, and the Rigs to Reefs program is not deemed to be an environmentally acceptable alternative to complete removal, then the state will have created an endowment fund of questionable value.

By providing a substantial economic incentive for leaving decommissioned rigs in place, the state will be characterized as having anticipated and perhaps even suggested a preference for a determination that the Rigs to Reefs program is in the best interests of the state. Requiring oil

companies to contribute the full amount of decommissioning, less the cost of necessary studies and administrative costs, would remove this incentive, and allow the state to make an independent determination free from the industry intervention about the relative merits of the program relative to the merits of the program.

The bill provides that the oil companies must provide sufficient funds to the state to provide for overall management and to ensure that the state can defend itself against any liability, but it is unclear how the amount necessary to accomplish this would be calculated. If endowment funding is utilized to cover the costs of enforcement, monitoring, maintenance and liability, it is unclear how much will be left for the purpose of marine research and enhancement.

Items beyond the scope of the Commission's purview also raise concerns. While Commission staff is supportive of the concept of creating "no take" zones around the decommissioned platforms, it is unclear whether DFG has the necessary resources to enforce this, along with ongoing maintenance.

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BILL TEXT ATTACHED

BILL NUMBER: SB 1 AMENDED BILL TEXT

AMENDED IN SENATE MARCH 8, 2001

INTRODUCED BY Senator Alpert (*Coauthors: Senators Costa, Johannessen, Karnette, and Machado*) (*Coauthors: Assembly Members Aanestad and Kelley*)

DECEMBER 4, 2000

An act to amend Sections 6420, 6421, and 6423 of, to add Article 2.5 (commencing with Section 6426) to Chapter 5 of Part 1 of Division 6 of, and to repeal and add Section 6425 of, the Fish and Game Code, and to add Division 20.55 (commencing with Section 30951) and Division 20.6 (commencing with Section 30960) to the Public Resources Code, relating to marine preservation, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1, as amended, Alpert. Decommissioned oil platforms and production facilities: California Endowment for Marine Preservation.

(1) Existing law declares that the Pacific Ocean and its rich marine living resources are of great environmental, economic, aesthetic, recreational, educational, scientific, nutritional, social, and historic importance to the people of California. Under existing law, the Department of Fish and Game administers the California Artificial Reef Program, which includes, as one of its components, the placement of artificial reefs in state waters.

This bill , instead, would describe the placement of artificial reefs as including decommissioned offshore oil platforms in state and federal waters. The bill also would establish the California Endowment for Marine Preservation in order to create a permanent source of funding for projects that will conserve, protect, restore, and enhance the open coastal marine resources of the state.

The endowment would be governed by a board of directors, with membership and duties prescribed by the bill.

The bill would require the endowment to coordinate its activities with the Department of Fish and Game, the California Coastal Commission, the San Francisco Bay Conservation and Development Commission, the State Lands Commission, and appropriate federal agencies.

The bill would specify that no employee of the endowment is an employee of the State of California or subject to specified provisions of existing law governing employer-employee relations.

The bill would create the California Marine Resources Trust Fund for the purpose of creating a permanent source of funding for projects that will conserve, protect, restore, and enhance the open coastal marine resources of the state. The bill would declare this purpose to be a special fund purpose. The bill would prescribe the sole purposes for which the moneys in the fund may be expended. The bill would require the Secretary of the Resources Agency and the Director of Fish

and Game to serve as the trustee of the fund. The bill also would create the California Marine Resources Trust Fund Advisory Committee, with membership and duties prescribed by the bill.

The bill would require each owner and operator of certain offshore oil platforms or production facilities who chooses to participate and who receives government permits that allow the platform or facility to be converted into an artificial reef, to deposit with the endowment, with the trust fund, and with counties adjacent to the location of the facility, as prescribed, a percentage of the cost savings to the owner or operator from converting the platform or facility into an artificial reef, with certain exceptions, rather than removing the platform or facility. The bill would authorize the endowment to expend the money for specified purposes and would declare those purposes to be special fund purposes. The authorization to make expenditures of these moneys constitutes an appropriation.

The bill would require the endowment to submit a report to the Legislature concerning, among other things, the operations, activities, and financial condition of the endowment.

The bill would require the Department of Fish and Game to serve as the primary authority for managing and operating artificial reefs created from offshore oil platforms or production facilities. The bill would authorize the department to approve the conversion of an offshore oil platform or production facility into an artificial reef if it will, among other things, be consistent with the Magnuson-Stevens Fishery Conservation and Management Act, the National Fishing Enhancement Act, and state and federal water quality laws, and will meet other specified requirements. The bill would require the department to determine criteria for biological evaluation of an oil platform or production facility for use as an artificial reef. The bill would require the department, if the responsible state and federal agencies approve the partial decommissioning of one or more oil platforms or production facilities allowing an offshore oil platform or production facility to be converted into an artificial reef, to prohibit all fishing or removal of any marine life from the artificial reef and within a reasonable buffer. The bill would also require the department to establish penalties for violations of any prohibition. The bill would authorize the department to allow take for research purposes.

(2) Existing law provides that, unless otherwise specified, any violation of the Fish and Game Code is a misdemeanor.

By requiring the department to prohibit fishing in designated areas and to establish penalties for violations of that prohibition, the bill would create a crime, thereby constituting a state-mandated local program.

(3) Existing law continuously appropriates money in the Fish and Game Preservation Fund to the department to carry out the Fish and Game Code.

By imposing new duties on the department, the bill would make an appropriation.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 6420 of the Fish and Game Code is amended to read:

6420. The Legislature finds and declares all of the following:

(a) Declines in various southern California marine species of fish have adversely affected the sport and commercial fishing industry.

(b) Efforts to enhance these species through the placement of artificial reefs need to be investigated.

(c) A program of artificial reef research and development, including reef design, placement, and monitoring, is in the public interest and can best be accomplished under the administration of the department with the cooperation and assistance of the University of California, the California State University, other established, appropriate academic institutions, and other organizations with demonstrated expertise in the field.

(d) A state artificial reef research and construction program under the administration of the department is necessary to coordinate ongoing studies and construction of artificial reefs in waters of the state.

(e) The state artificial reef program shall be managed pursuant to this article and consistent with the standards and guidelines established under the National Fishing Enhancement Act of 1984.

SEC. 2. Section 6421 of the Fish and Game Code is amended to read:

6421. For purposes of this article, the following terms have the following meanings:

(a) "Artificial reef" means manmade or natural objects intentionally placed in selected areas of the marine environment to duplicate those conditions that induce production of fish and invertebrates on natural reefs and rough bottoms and that stimulate the growth of kelp or other midwater plant life which creates natural habitat for those species.

(b) "National Fishing Enhancement Act of 1984" means Title II of Public Law 98-623.

(c) "Production" means increases in the biomass of a species or number of species.

(d) "Program" means the California Artificial Reef Program.

(e) "Reef materials" includes only materials allowed under the National Artificial Reef Plan, adopted under the National Fishing Enhancement Act of 1984 for construction of artificial reefs.

SEC. 3. Section 6423 of the Fish and Game Code is amended to read:

6423. The program shall include all of the following:

(a) The placement of artificial reefs, including decommissioned offshore oil platforms, in state and federal waters.

(b) A study of existing successful reefs and all new reefs placed by the program to determine the design criteria needed to construct artificial reefs capable of increasing fish and invertebrate production in waters of the state.

(c) A determination of the requirements for reef siting and placement.

SEC. 4. Section 6425 of the Fish and Game Code is repealed.

SEC. 5. Section 6425 is added to the Fish and Game Code, to read:

6425. It is the intent of the Legislature that sources of funding for the program may include, but are not limited to, the Fish and Game Preservation Fund, the California Environmental License Plate Fund, the Wildlife Restoration Fund, park and recreation bond funds, federal grants-in-aid, county fish and game propagation funds, and donations from either private or private nonprofit organizations.

SEC. 6. Article 2.5 (commencing with Section 6426) is added to Chapter 5 of Part 1 of Division 6 of the Fish and Game Code, to read:

Article 2.5. Oil Platforms as Artificial Reefs

6426. The Legislature hereby finds and declares all of the following:

(a) There is an existing permitting process for decommissioning of offshore oil platforms or production facilities.

(b) Decommissioning of the offshore oil platforms or production facilities has already occurred and as part of the permitting process there was some consideration given to converting platforms or facilities into artificial reefs.

(c) The operator or owner of offshore oil platforms or production facilities would save a considerable sum of money if decommissioning the offshore oil platform or production facility as an artificial reef ~~was~~, *or if the removal and use as reef material in a designated area, were* allowed by permitting local, state, and federal agencies.

(d) The savings that result from that conversion should be shared with the citizens of the State of California.

(e) A mechanism is needed to ensure that if local, state, and federal agencies allow the conversion of an offshore oil platform or production facility as an artificial reef, the citizens of the State of California would be able to share in the savings and those shared funds would be used to benefit the open coastal marine resources that lie offshore of California.

6426.1. Unless the context requires otherwise, the following definitions govern the construction of this article:

(a) "Artificial reef" means manmade or natural objects intentionally placed in selected areas of the marine environment to duplicate those conditions that induce production of fish and invertebrates on natural reefs and rough bottoms and that stimulate the growth of kelp or other midwater plant life which creates natural habitat for those species.

(b) "Cost savings" are the difference between the estimated cost to the operator or owner of complete removal of an offshore oil platform or production facility and the costs incurred by the operator or owner of converting a platform or facility into an artificial reef.

(c) "Endowment" means the California Endowment for Marine Preservation.

(d) "National Fishing Enhancement Act of 1984" means Title II of Public Law 98-623.

(e) "Offshore oil platform or production facility" means platforms, piers, and artificial islands located seaward of mean lower low water, used for oil and gas exploration, development, production, processing, or storage.

(f) "Oil" means any kind of petroleum, liquid hydrocarbons, natural gas, or petroleum products or any fraction or residues therefrom.

(g) "Open coastal marine resource" means those marine resources that use open coastal waters as their habitat.

(h) "Open coastal waters" means the area composed of the submerged lands of the state that are below the mean lower low water extending seaward to the boundaries of the Exclusive Economic Zone.

(i) "Reef materials" includes only materials allowed under the National Artificial Reef Plan, adopted under the National Fishing Enhancement Act of 1984 for construction of artificial reefs.

(j) "State waters" means waters within the seaward boundary of the state as identified in Section 2 of Article III of the California Constitution.

6426.2. (a) The department shall serve as the primary authority for managing and operating artificial reefs created from offshore oil platforms or production facilities. The department may obtain funds for the planning, development, maintenance, and operation of those artificial reefs and may accept gifts, subventions, grants, rebates, and subsidies from any lawful source. The department may adopt regulations to implement this article.

(b) For the purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), the State Lands Commission shall be the lead agency for projects that include the decommissioning of oil platforms or production facilities or appurtenant construction, or both, including pipelines, located in state waters that may be used as artificial reefs pursuant to this act. The department shall be the lead agency when the platform or production facility and appurtenant construction lies solely in federal waters.

6426.4. (a) The Legislature further finds and declares all of the following:

(1) Offshore oil platforms may function as artificial reefs and provide habitat for many species, including some whose numbers have dropped precipitously.

(2) Protection of those species is vital to sustaining ~~sports~~ *sport* and commercial fishing opportunities in California.

(3) Allowing take at artificial reefs created from offshore oil platforms or production facilities threatens efforts to improve and restore ~~sports~~ *sport* and commercial fishing opportunities in California.

(b) If the responsible state and federal agencies approve the partial decommissioning of one or more oil platforms or production facilities, allowing an offshore oil platform or production facility to be converted into an artificial reef, *either in place or in another location* the department shall prohibit all fishing or removal of any marine life from the artificial reef and within a reasonable buffer. The department may allow take for research purposes. The department shall establish penalties for violations of any prohibition.

6426.5. The Artificial Reef Enhancement Fund is hereby created in the State Treasury. The money in the fund may only be used for the purposes of this article, upon appropriation by the Legislature. Until expended by the department, moneys in the fund shall be deposited in the Pooled Money Investment Fund and the interest deposited in the Artificial Reef Enhancement Fund.

6427. The department may approve the conversion of an offshore oil platform or production facility into an artificial reef only if the following criteria are satisfied:

(a) The artificial reef will be consistent with the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. Sec. 1801 et seq.) and the National Fishing Enhancement Act of 1984.

(b) The alternative of converting the decommissioned offshore oil platform or production facility into an artificial reef in the marine environment provides a net benefit to the marine environment compared to the alternative of removing the facilities from the marine environment.

(c) The artificial reef will be consistent with state and federal water quality laws.

(d) The artificial reef will be maintained in a manner consistent with navigational safety and all applicable state, federal, and international laws.

(e) The artificial reef is consistent with the California Coastal Management Program.

(f) (1) The owner or operator of the offshore oil platform or production facility provides sufficient funds to the department for the purposes of conducting all of the following:

(A) An evaluation of the platform or facility to determine the benefits of the artificial reef sites to biotic productivity, including any research needed.

(B) Activities that meet the requirements of this subdivision, including the costs of reviewing, approving, and permitting the proposed projects, which includes the costs of determining whether the project meets the requirements of all applicable laws and regulations and the costs of environmental assessment and review.

(C) Overall management of the reef, including enforcement and monitoring.

(D) Ensuring that the owner or operator of the oil platform or production facility indemnifies the state against any and all liability that may result, including defending the state against any claims against the department for any actions the department undertakes pursuant to this article. In adopting requirements under this article, the department may consider a variety of mechanisms, including an agreement to indemnify the state, an insurance policy, a cash settlement, or any other mechanism that ensures that the state can defend itself against any liability claims against the department for any actions the department undertakes pursuant to this article and pay any resulting judgments.

(2) Funds required for the purposes of this subdivision shall be deposited into the Artificial Reef Enhancement Fund, except those funds required by the department to pay any permitting costs, including, but not limited to, scientific evaluations, environmental impact reports, and monitoring studies.

(g) The owner or operator of the offshore oil platform or production facility applies for, and receives, all required permits issued by any governmental agency, including, but not limited to, the permit issued by the United States Army Corps of Engineers.

6427.5. The department may take title to a decommissioned offshore oil platform or production facility in either state or federal waters if an agreement is reached that will ensure that the cost savings identified are deposited according to Section 6429.3, the requirements of this article are met, the owner or operator has received all applicable government permits and the artificial reef conversion operation is completed, and the state is indemnified from any liability that may result from approving the conversion of an offshore oil platform or production facility as an artificial reef or any liability that may result from the ownership of the reef.

6428. (a) The Legislature hereby finds and declares all of the following:

(1) The conversion of offshore oil platforms or production facilities into artificial reefs should not be done until there has been a thorough scientific study and evaluation.

(2) The costs of such a study shall be borne by the operators of offshore oil platforms or production facilities.

(3) Each offshore oil platform or production facility creates a unique environment because of its location, depth, and other ecological factors.

(4) Because of the significant variations, those scientific studies and evaluations shall be done for each offshore oil platform or production facility for which an application for the use of the oil platform or production facility as an artificial reef has been made to the department.

(b) Therefore, the department shall determine criteria for biological evaluation of an oil platform or production facility for use as an artificial reef and shall consult with and advise the California Coastal Commission, the State Lands Commission, and other responsible agencies as to these criteria. The criteria shall include, but need not be limited to, the depth of the artificial reef in relation to its value as habitat and the location of the artificial reef in relation to other reefs, both natural and artificial. The criteria shall not include any discussion of the funds to be generated by the conversion to an artificial reef. The department shall commence working on the criteria upon receiving an application for the use of the oil platform or production facility as an artificial reef.

The department's determination of this criteria as a necessary part of any consideration of an application and the costs of determining the criteria shall be borne by the applicant or applicants.

6429. The department shall ensure that any cost savings are accurately and reasonably calculated. The department may contract or enter into a memorandum of understanding with any other appropriate governmental agency or other party, including an independent expert, to ensure that cost savings are accurately and reasonably calculated. The department shall use and consider any estimates of cost savings made by any governmental agency, including, but not limited to, the Internal Revenue Service, Franchise Tax Board, Minerals Management Service, and State Lands Commission. If the department disagrees with the estimate used by any other agency, the department shall prepare a public report. That public report shall explain any discrepancies and differences between those estimates and provide the basis for the department's finding that other estimates are less reliable and the department's use of a different cost savings estimate.

6429.1. The oil platform or production facility owner or operator at any time, prior to transfer of title to the state, at its sole discretion, shall have the right to cease participation in the artificial reef conversion and pursue full decommissioning, subject to reimbursement to the state of the reasonable costs and expenses incurred by the state.

6429.2. (a) Nothing in this article shall be construed to do any of the following:

(1) Relieve the prior owner or operator of an offshore oil platform or production facility from any continuing liability under any of the following if the liability is associated with seepage or release of oil from an offshore oil platform or production facility that was decommissioned pursuant to an order of, or any action taken by, and in accordance with, any applicable rule or regulation of, any federal or state agency:

(A) Any state statute or regulation regarding liability for the spilling of oil.

(B) The federal Oil Pollution Act of 1990 (33 U.S.C. Sec. 2701 et seq.).

(C) Any other provision of law.

(2) Establish any new liability on the part of the state.

(3) Require, authorize, or in any way encourage any agency with jurisdiction to approve the artificial reef conversion, in whole or in part, of an offshore oil platform or production facility.

(4) Promote, encourage, or facilitate offshore oil exploration, development, and production within California's open coastal waters.

(5) Require the United States Department of the Interior's Minerals Management Service or the State Lands Commission to modify, amend, or alter an existing oil and gas lease to approve conversion of an offshore oil platform or production facility.

(6) Alter any existing law or applicable rule or regulation of any federal or state agency that establishes liability for damages arising with respect to artificial reefs or reef materials, including, but not limited to, components of decommissioned oil facilities.

(7) Alter any existing law or policy that protects or otherwise favors natural reefs.

(8) Alter or limit the authority or duties of any state or local agency, including, but not limited to, the State Lands Commission and the California Coastal Commission.

(9) Approve any particular method of abandonment.

(b) Further, any conversion of an offshore oil platform or production facility for use as an artificial reef shall not be used or counted as mitigation for any environmental impacts or natural resource damages.

6429.3. (a) When all applicable local, state, and federal permits are granted to allow any offshore oil platform or production facility to be converted into an artificial reef, a percentage of the cost savings to the owner or operator from converting the platform or facility into an artificial reef, rather than removing the facility, shall be apportioned by the owner or operator to the entities described in subdivision (d) according to the following schedule:

(1) If the offshore oil platform or production facility is located in water the depth of which at mean high tide is less than 200 feet, 35 percent of the cost savings.

(2) If the offshore oil platform or production facility is located in water the depth of which at mean high tide is at least 200 feet, but less than 400 feet, 50 percent of the cost savings.

(3) If the offshore oil platform or production facility is located in water the depth of which at mean high tide is 400 feet or more, 65 percent of the cost savings.

(b) The intent of this section is to establish a voluntary program through which an individual owner or operator of one or more offshore oil platforms or production facilities may choose to participate in a program to create an artificial reef from the platform or facility with the assent of all permitting agencies, whether they are state, local, or federal. However, the owner or operator of a decommissioned offshore oil platform or production facility shall apportion the portion of the savings calculated pursuant to subdivision (a) to the entities described in subdivision (d) if a platform or production facility is converted into an artificial reef in open coastal waters.

(c) This section does not apply to an offshore oil platform or production facility if the majority of the costs of removal of the platform or facility will be paid by the federal government, the State of California, or a grantee of state tide and submerged lands.

(d) The funds described in subdivision (a) shall be apportioned as follows:

(1) ____ percent shall be deposited into the California Marine Resources Trust Fund and upon appropriation by the Legislature — may be used for the purposes of Division 20.55 (commencing with Section 30951) of the Public Resources Code.

(2) ____ percent shall be deposited into the California Endowment for Marine Preservation. The endowment may expend that money for the purposes of Division 20.6 (commencing with Section 30960) of the Public Resources Code.

(3) ____ percent shall be deposited by the owner or operator with the board of supervisors of the county immediately adjacent to the location of the facility prior to its decommissioning. The county shall use those funds for projects within "coastal lands and waters," which, for the purposes of this paragraph, means (1) those areas composed of those tide and submerged lands of the state that are waterward of the mean high tide line and extending seaward to the boundaries of the Exclusive Economic Zone and (2) those areas landward of the mean high tide line that are also within the coastal zone, meaning that area defined and described pursuant to Section 30103 of the Public Resources Code. The projects shall otherwise meet the requirements of Section 30981 of the Public Resources Code.

(e) The Legislature finds and declares that the purposes set forth in subdivision (d) are special fund purposes.

6429.4. Nothing in this article is intended, and it shall not be construed, to limit or affect the authority or duties of any state or local agency, including, but not limited to, the State Lands Commission and the California Coastal Commission. Nothing in this division is intended, and it shall not be construed, to be an approval of any particular method of abandonment.

SEC. 7. Division 20.55 (commencing with Section 30951) is added to the Public Resources Code, to read:

DIVISION 20.55. CALIFORNIA MARINE RESOURCES TRUST FUND

30951. Unless the context requires otherwise, the following definitions govern the construction of this article:

(a) "Artificial reef" means manmade or natural objects intentionally placed in selected areas of the marine environment to duplicate those conditions that induce production of fish and invertebrates on natural reefs and rough bottoms and that stimulate the growth of kelp or other midwater plant life that creates natural habitat for those species.

(b) "Cost savings" are the difference between the estimated cost to the operator or owner of complete removal of an offshore oil platform or production facility and the costs incurred by the operator or owner of converting a platform or facility into an artificial reef.

(c) "National Fishing Enhancement Act of 1984" means Title II of Public Law 98-623.

(d) "Offshore oil platform or production facility" means platforms, piers, and artificial islands located seaward of mean lower low water, used for oil and gas exploration, development, production, processing, or storage.

(e) "Oil" means any kind of petroleum, liquid hydrocarbons, natural gas, or petroleum products or any fraction or residues therefrom.

(f) "Open coastal marine resource" means those marine resources that use open coastal waters as their habitat.

(g) "Open coastal waters" means the area composed of the submerged lands of the state that are below the mean low water mark extending seaward to the boundaries of the Exclusive Economic Zone.

(h) "Reef materials" includes only materials allowed under the National Artificial Reef Plan, adopted under the National Fishing Enhancement Act of 1984 for construction of artificial reefs.

(i) "State waters" means waters within the seaward boundary of the state as identified in Section 2 of Article III of the California Constitution.

(j) "Trustee" means the Secretary of the Resources Agency and the Director of Fish and Game acting in their role as trustee for the California Marine Resources Trust Fund.

30952. (a) The California Marine Resources Trust Fund is hereby created in the State Treasury. The money in the fund may only be used for the purposes of this division, upon appropriation by the Legislature. For the purposes of this article, "fund" refers to the California Marine Resources Trust Fund.

(b) The Secretary of the Resources Agency and the Director of Fish and Game shall serve as the trustee of the fund and shall administer the fund in accordance with this division.

(c) The trustee may develop and adopt any rules, regulations, and guidelines the trustee determines to be necessary to carry out and enforce this article.

30953. (a) The California Marine Resources Trust Fund Advisory Committee is hereby created and shall be appointed by the Governor as follows:

(1) One member who shall be an expert in marine science from the University of the California, the California State University, or other accredited university.

(2) One member who shall be from a nonprofit public interest organization with an emphasis on the conservation of open coastal marine resources and habitat.

(3) One member who shall be an expert in marine fisheries from the University of California, the California State University, or other accredited university.

(4) One member who shall be a representative of a marine conservation organization that has an emphasis on sustainable recreational marine activities.

(5) Two representatives of the public.

(6) Two persons who are serving as elected local government officials for a local governmental agency with jurisdiction over, or directly adjacent to, open coastal waters containing oil platforms or production facilities.

(7) One representative of a nonprofit, public interest organization with emphasis on marine conservation.

(8) One representative of ~~sports~~ *sport* or commercial fishing interests.

(b) The Secretary of the Resources Agency, or his or her designee, shall be a member of the advisory committee and shall serve as chairperson.

(c) The committee shall meet as often as required, but at least twice per year.

(d) Members of the committee shall receive no salary but shall be paid one hundred dollars (\$100) per day for each meeting and shall be reimbursed for all necessary travel expenses. Members of the committee shall serve at the pleasure of their appointing authority.

(e) All meetings of the committee shall be noticed and open to the public.

(f) Prior to spending any money from the fund, the trustee shall prepare a list of proposed projects. The list of proposed projects shall be available to the advisory committee and the public for 15 days prior to any meeting by the committee.

(g) The committee shall discuss and prepare a recommendation for the trustee on all proposed projects. This recommendation shall be of an advisory nature only. This shall occur at a public meeting where public testimony on the proposed projects and the recommendations of the advisory committee shall be allowed.

30954. After the first oil platform or production facility has been permitted for decommissioning, the trustee shall use the funds deposited into the fund to repay any loans received from the state, with interest at the rate accruing to moneys in the Pooled Money Investment Account.

30955. (a) The purpose of the California Marine Resources Trust Fund is to create a permanent source of funding for projects that will conserve, protect, restore, and enhance the open coastal marine resources of the state. To achieve this objective, the fund may be used solely for the following purposes:

(1) Support applied research into open coastal marine fisheries, marine habitat, or other related research in support of projects to conserve, protect, restore, and enhance the open coastal marine resources of the state. In so doing, the committee shall endeavor to take maximum advantage of the scientific research expertise available from the University of California, the California State University, other institutions of higher learning, and marine science research institutions with expertise in marine resource issues. Funding for research projects shall not exceed 10 percent of the overall funding in any fiscal year.

(2) Support projects in open coastal waters that enhance environmentally sustainable marine activities.

(3) Support projects in open coastal waters to enhance the habitat for open coastal marine life.

(4) Support programs in open coastal waters that lead to enforcement of laws regulating the take of open coastal marine species, the protection of habitat, and the protection and monitoring of open coastal marine species and habitat with an emphasis on innovative approaches.

(5) Support programs to aid in the establishment of safe fishing levels and reduce or prevent habitat damage in open coastal waters.

(6) Support programs to monitor catch and bycatch and to reduce bycatch in fisheries in open coastal waters managed by the State of California or the United States, or both.

(7) Eliminate sources of pollution that significantly impacts open coastal waters.

(8) Programs to mitigate beach erosion.

(b) The trustee may also do all of the following:

(1) Obtain grants from, and contract with, individuals and with private, local, state, and federal agencies, organizations, and institutions.

(2) Contract with, or make grants to, conservation and educational organizations — ; marine institutes — ; aquariums and museums; institutions of higher education — ; and local, state, and federal agencies.

(3) Loan funds to private, local, state, and federal agencies, organizations, and institutions.

(c) For funds spent for the purposes of paragraphs (7) and (8) of subdivision (a), the projects shall significantly benefit coastal lands and waters. For the purposes of this section, "coastal lands and waters" means (1) those areas composed of those tide and submerged lands of the state that are waterward of the mean high tide line and extending seaward to the boundaries of the Exclusive Economic Zone and (2) those areas landward of the mean high tide line that are also within the coastal zone, meaning that area defined and described pursuant to Section 30103.

(d) Moneys in the fund shall not be used for any purpose other than those set forth in this section. Funds spent pursuant to this section shall be used to supplement, and not supplant, state funding.

30956. The trustee shall coordinate its activities with the California Coastal Commission, the San Francisco Bay Conservation and Development Commission, the State Lands Commission, and appropriate federal agencies, including the National Marine Fisheries Service and the United States Department of the Interior's Minerals Management Service. Nothing in this article limits the authority and responsibility of any of these agencies.

30957. The trustee may receive charitable contributions or any other source of income that may be lawfully received.

SEC. 8. Division 20.6 (commencing with Section 30960) is added to the Public Resources Code, to read:

DIVISION 20.6. CALIFORNIA ENDOWMENT FOR MARINE PRESERVATION

CHAPTER 1. FINDINGS AND DECLARATIONS

30960. (a) The Legislature hereby finds and declares all of the following:

(1) The Pacific Ocean and its rich marine living resources are of great environmental, economic, aesthetic, recreational, educational, scientific, social, cultural, and historic importance to the people of California.

(2) Programs to conserve, protect, restore, and enhance the marine fishery resources of the state are needed because of past overfishing and damage to marine habitats and their ecosystems. These programs should be coordinated with efforts to reduce overfishing and damage to marine habitats and their ecosystems.

(3) A program that will speed up the decommissioning of offshore oil platforms will enhance the environmental, aesthetic, and recreational features of the coastal environment. Any offshore oil platforms that are nearing possible retirement should be removed as quickly as possible to improve the aesthetic character of the areas of the California coast that have been impacted by offshore oil activities.

(4) The State of California recognizes the need to formulate its environmental and resource management policies based on the best available scientific information and should utilize the University of California, the California State University, other institutions of higher learning, and marine science research institutions to the fullest extent possible to assist it in achieving that goal.

(b) It is the intent of the Legislature that, consistent with the conservation, protection, restoration, and enhancement of open coastal marine resources, any offshore oil platform or production facility, or any part thereof, that is converted to an artificial reef shall be a no-take zone, and that sport and commercial fishing shall be prohibited there.

CHAPTER 2. DEFINITIONS

30965. Unless the context requires otherwise, the following definitions govern the construction of this division:

(a) "Artificial reef" means manmade or natural objects intentionally placed in selected areas of the marine environment to duplicate those conditions that induce production of fish and invertebrates on natural reefs and rough bottoms and that stimulate the growth of kelp or other midwater plant life which creates natural habitat for those species.

(b) "Board" means the Board of Directors of the California Endowment for Marine Preservation.

(c) "Cost savings" are the difference between the estimated cost to the operator or owner of complete removal of an offshore oil platform or production facility and the costs incurred by the operator or owner of converting a platform or facility into an artificial reef.

(d) "Endowment" means the California Endowment for Marine Preservation.

(e) "National Fishing Enhancement Act of 1984" means Title II of Public Law 98-623.

(f) "Offshore oil platform or production facility" means platforms, piers, and artificial islands located seaward of mean lower low water, used for oil and gas exploration, development, production, processing, or storage.

(g) "Oil" means any kind of petroleum, liquid hydrocarbons, natural gas, or petroleum products or any fraction or residues therefrom.

(h) "Open coastal marine resource" means those marine resources that use open coastal waters as their habitat.

(i) "Open coastal waters" means the area composed of the submerged lands of the state that are below the mean lower low water extending seaward to the boundaries of the Exclusive Economic Zone.

(j) "Reef materials" includes only materials allowed under the National Artificial Reef Plan, adopted under the National Fishing Enhancement Act of 1984 for construction of artificial reefs.

(k) "State waters" means waters within the seaward boundary of the state as identified in Section 2 of Article III of the California Constitution.

CHAPTER 3. ESTABLISHMENT

30970. The California Endowment for Marine Preservation is hereby established. The endowment is subject to this division and to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110), Division 2, Title 1, Corporations Code). If there is a conflict between this division and the Nonprofit Public Benefit Corporation Law, this division shall prevail.

30971. (a) Nothing in this division shall be construed to do any of the following:

(1) Relieve the prior owner or operator of an oil facility from any continuing liability under any of the following if the liability is associated with seepage or release of oil from an oil facility that was decommissioned pursuant to an order of, or any action taken by, and in accordance with, any applicable rule or regulation of — any federal or state agency.

(A) Any state statute or regulation regarding liability for the spilling of oil.

(B) The federal Oil Pollution Act of 1990 (33 U.S.C. Sec. 2701 et seq.).

(C) Any other provision of law.

(2) Establish any new liability on the part of the state.

(3) Require, authorize, or in any way encourage any agency with jurisdiction to approve the reefing, in whole or in part, of an oil platform.

(4) Promote, encourage, or facilitate offshore oil exploration, development, and production within California's open coastal waters.

(5) Require the United States Department of the Interior's Minerals Management Service or the State Lands Commission to modify, amend, or alter an existing oil and gas lease to approve the reefing of an oil platform in place.

(6) Alter any existing law that establishes liability for damages arising with respect to artificial reefs or reef materials, including, but not limited to, components of decommissioned oil facilities.

(7) Alter any existing law or policy that protects or otherwise favors natural reefs.

(8) Alter or limit the authority or responsibility of the California Coastal Commission, the *San Francisco* Bay Conservation and Development Commission, the State Lands Commission, the

National Marine Fisheries Service, or the United States Department of the Interior's Minerals Management Service.

(9) Promote or encourage any particular method of decommissioning.

(b) Further, any decommissioning of an offshore oil platform or production facility for use as an artificial reef shall not be used or counted as mitigation for any environmental impacts or natural resources damages.

CHAPTER 4. BOARD OF DIRECTORS

30975. The endowment is governed by the Board of Directors of the California Endowment for Marine Preservation.

30976. The board consists of nine members appointed by the Governor as follows:

(a) One member who shall be an expert in marine science from the University of California, the California State University, or other accredited university.

(b) One member who shall be from a nonprofit public interest organization with an emphasis on the conservation of open coastal marine resources and habitat.

(c) One member who shall be an expert in marine fisheries from the University of California, the California State University, or other accredited university.

(d) One member who shall be a representative of a marine conservation organization that has an emphasis on sustainable recreational marine activities.

(e) The Secretary of the Resources Agency, or his or her designee, who shall serve as chairperson.

(f) A representative of the public.

(g) Two persons who are serving as elected local government officials for a local governmental agency with jurisdiction over, or directly adjacent to, open coastal waters containing oil platforms or production facilities.

(h) A representative of a nonprofit, public interest organization with emphasis on marine conservation.

30977. The term of office of each member of the board is six years. However, the term of office for the first board member appointed pursuant to subdivisions (a), (b), and (c) of Section 30976 is two years. The term of office for the first board members appointed pursuant to subdivisions (f) and (g) of Section 30976 is four years.

30978. Any vacancy on the board shall be filled by the Governor by appointment for the unexpired term.

30979. (a) The board shall conduct its initial meeting as soon as possible after incorporation.

(b) The board shall meet as often as required, but at least twice per year.

(c) Members of the board shall attend at least 50 percent of all duly convened meetings of the board in a calendar year. A member who fails to attend at least 50 percent of all duly convened meetings of the board in a calendar year forfeits membership on the board. The vacancy shall be filled pursuant to Section 30978.

(d) Members of the board shall receive no salary but shall be paid one hundred dollars (\$100) per day for each meeting and shall be reimbursed for all necessary travel expenses.

CHAPTER 5. POWERS AND DUTIES

30980. The members of the board first appointed shall serve as incorporators of the endowment and shall take whatever actions are necessary to establish the endowment pursuant to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110), Division 2, Title 1, Corporations Code) once a majority of the board is appointed.

30980.5. It is the intent of the Legislature that the endowment not be incorporated until one offshore oil platform or production facility has been permitted for decommissioning. The incorporation shall not occur until all necessary applicable government permits for decommissioning as an artificial reef have been received by an owner or operator of the oil platform or production facility and the Department of Fish and Game has received approval from the appropriate federal agencies for a permit for an artificial reef for the decommissioned offshore oil platform or production facility.

30981. (a) The purpose of the endowment is to create a permanent source of funding for projects that will conserve, protect, restore, and enhance the open coastal marine resources of the state. To achieve this objective, the endowment may do any or all of the following:

(1) Support applied research into open coastal marine fisheries, marine habitat, or other related research in support of projects to conserve, protect, restore, and enhance the open coastal marine resources of the state. In so doing, the board shall endeavor to take maximum advantage of the scientific research expertise available from the University of California, the California State University, other institutions of higher learning, and marine science research institutions with expertise in marine resource issues. Funding for research projects shall not exceed 10 percent of the overall funding in any fiscal year.

(2) Support projects in open coastal waters that enhance environmentally sustainable marine activities.

(3) Support projects in open coastal waters to enhance the habitat for open coastal marine life.

(4) Support programs in open coastal waters that lead to enforcement of laws regulating the take of open coastal marine species, the protection of habitat, and the protection and monitoring of open coastal marine species and habitat with an emphasis on innovative approaches.

(5) Support programs to aid in the establishment of safe fishing levels and reduce or prevent habitat damage in open coastal waters.

(6) Support programs to monitor catch and bycatch and to reduce bycatch in fisheries managed by the State of California and by the United States.

(b) The board may also do all of the following:

(1) Obtain grants from, and contract with, individuals and with private, local, state, and federal agencies, organizations, and institutions.

(2) Contract with, or make grants to, conservation and educational organizations; marine institutes; aquariums and museums; institutions of higher education; and local, state, and federal agencies.

(3) Loan funds to private, local, state, and federal agencies, organizations, and institutions.

(c) The endowment shall create a business plan for a five-year period. The endowment shall update the plan annually.

(d) On or before February 1 each year, the endowment shall submit a report to the appropriate fiscal and policy committees of the Legislature for the preceding fiscal year. The report shall include all of the following:

(1) The updated business plan created pursuant to subdivision ~~(d)~~ (c).

(2) A comprehensive and detailed report of the endowment's operations, activities, financial condition, and accomplishments under this section.

(3) A listing of each recipient of a grant from the endowment and the purposes and amount of that grant.

(4) A listing of any loan that the endowment has received and the plan for repaying the loan.

(5) A report of each independent audit required pursuant to subdivision (e) of Section 30985.

30981.5. Members of the board and appropriate staff shall be available to testify before appropriate committees of the Legislature.

30982. The endowment shall not contribute to, or otherwise support, any political party, candidate for elective public office, or ballot measure.

30983. The endowment may hire employees and may obtain legal counsel. No employee of the endowment is an employee of the State of California. No employee of the endowment is subject to Chapter 10.3 (commencing with Section 3512) of, or Chapter 10.5 (commencing with Section 3525) of, Division 4 of Title 1 of the Government Code. Employees of the endowment have the right to representation consistent with the National Labor Relations Act (29 U.S.C. Sec. 151 et seq.).

30984. The endowment shall coordinate its activities with the Department of Fish and Game, the California Coastal Commission, the San Francisco Bay Conservation and Development Commission, the State Lands Commission, and appropriate federal agencies, including the National Marine Fisheries Service and the United States Department of the Interior's Minerals

Management Service. Nothing in this division limits the authority and responsibility of any of these agencies.

CHAPTER 6. FINANCIAL TRANSACTIONS AND AUDITS

30985. (a) The endowment may receive charitable contributions or any sources of income that may be lawfully received, including loans from the state.

(b) The endowment shall administer any funds it receives in accordance with this division.

(c) The endowment shall invest and manage any funds it receives so that the investments shall provide a source of income in perpetuity and the principal amount consisting of charitable contributions and donations, including cost savings donated pursuant to Section 6429.3 of the Fish and Game Code, shall not be spent. Any returns on investments made by the endowment are the only funds that shall be available for expenditure by the endowment.

(d) The endowment shall invest and manage any funds it receives in accordance with the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110), Division 2, Title 1, Corporations Code).

(e) The accounts of the endowment shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants.

(f) The financial transactions of the endowment for any fiscal year may be audited by the Bureau of State Audits. A report of each audit completed pursuant to this subdivision shall be made to the Legislature and the Governor.

(g) Each recipient of assistance by grant, contract, or loan pursuant to this division shall keep records reasonably necessary to disclose fully the amount of the assistance, the disposition of the assistance, the total cost of the project or undertaking in connection with which the assistance is given or used, the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and other records that will facilitate an effective audit. Each recipient of a fixed price contract awarded pursuant to competitive bidding procedures is exempt from the requirements of this subdivision.

(h) The endowment, or its authorized representative, and the Bureau of State Audits shall have access to any records necessary for the purpose of auditing and examining all funds received or expended by the recipients of assistance.

30987. Nothing in this division is intended, nor shall it be construed, to limit or affect the authority or duties of any state or local agency, including, but not limited to, the State Lands Commission, the California Coastal Commission, and the Department of Fish and Game. Nothing in this division is intended, nor shall it be construed, as an approval of any particular method of abandonment.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or

infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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BILL ANALYSIS; SB 31 (Chesboro)**SUMMARY**

This bill would appropriate \$10.265 million over three years to the Department of Forestry and Fire Protection for the purpose of developing and implementing procedures for the control and management of Phytophthora fungus, which causes Sudden Oak Death Syndrome (SODS). The bill would take effect immediately as an Urgency statute.

PURPOSE OF THE BILL

The purpose of this bill is to require the Department to assist local governments and property owners in identifying, removal and disposal of trees dying as a result of SODS; to fund ongoing research into the cause and control of SODS; to conduct public education programs and to conduct aerial and on the ground inventories of affected populations.

EXISTING LAW

There is no existing law pertaining to Sudden Oak Death Syndrome. Some local governments have ordinances pertaining to native tree removal, mitigation and protection.

LEGISLATIVE HISTORY

This bill is one of three bills introduced this session to fund research and control of SODS. This bill tracks the language contained in AB 62 (Migden). AB 1602 (Keeley) is a spot bill.

BACKGROUND

Since 1995, coastal counties, including Santa Cruz, Marin, Monterey, Napa, Sonoma, San Mateo and Santa Clara have been reporting an alarming mortality rate in tanoak, coast live oak, and black oak trees and woodlands. These native species are generally distributed along the entire California and Oregon coast, and are key elements of several complex habitats in and outside of the coastal zone. Termed Sudden Oak Death Syndrome, or SODS, the exact nature and extent of SODS is not well understood. Pathologists have identified a new species of the fungus Phytophthora, as the likely causal agent for SOD, but numerous questions about this fungus and how it affects these species remain unanswered. Scientists consistently reiterate the point that the scope of the problem is unknown, but that it is likely to become more extensive. For example, additional ornamental species have recently been identified as hosts for the fungus, and the method of transport of SOD is not clearly understood. It is possible that the disease could migrate across the Central Valley into the Sierra Nevada foothills, or further north and/or south along the coast.

According to the California Oak Mortality Task Force, a working advisory committee comprised of scientists, academicians and agency representatives, the rapid dieback of oaks could cause several environmental changes. Woodland habitats will suffer unknown and possibly dramatic impacts to wildlife and habitat, and there will be a significant increase in the fire hazard risk from the buildup of dry fuel.

ANALYSIS

Sudden Oak Death Syndrome is currently limited to coastal counties, and it is found both in and out of the coastal zone. Coast live oak and tan oak are both species that are prevalent in central and northern California mixed oak woodlands. Thus, SODS will have a direct impact on these coastal zone resources. Although it may be argued that given enough time and genetic diversity the ecosystem will heal itself naturally, the fractured nature of the habitat and introduction of non-native species makes management essential.

This bill provides \$4,965,000 for grants to local governments for removal and disposal of hazard trees, restoration, mitigation, demonstration projects, monitoring workshops and other activities; \$2,000,000 for fire prevention; \$960,000 for research; \$820,000 for regulatory activities; and \$660,000 for education of homeowners, arborists, public works and utilities personnel and firefighters.

These funding recommendations come from the California Oak Mortality Task Force, a multi-agency task force comprised of federal, state, and local agency experts in SOD as well as scientists. Given the additional information gained since the bill was written, particularly in the area of newly identified host species, an augmentation to the amount of research funding may be warranted.

Grants to local governments for removal, disposal, mitigation and demonstration projects, will provide additional data from which to create policy and regulations for long-term management. Composting, co-generation and value-added products are all potentially viable alternatives which will be explored in the course of determining appropriate methods of disposal. However, the ecological role of dead and dying oak trees in the ecosystem should not be overlooked in the rush to remove hazard trees or reduce fuel loads. The Task Force recommends that wildland trees be left standing unless they pose a specific risk or nuisance.

SUPPORT/OPPOSITION

Support:

American Federation of State, County, and Municipal Employees, AFL-CIO, City of Novato, Marin County Board of Supervisors, Monterey County Board of Supervisors, Santa Cruz County Board of Supervisors, Solano County Board of Supervisors, Sonoma County Board of Supervisors

Opposition:

None on file

RECOMMENDED POSITION

Staff recommends the Commission **Support** SB 31.

LEGISLATIVE STAFF CONTACT

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BILL LANGUAGE ATTACHED

BILL NUMBER: SB 31 AMENDED

BILL TEXT

AMENDED IN SENATE FEBRUARY 22, 2001

INTRODUCED BY Senator Chesbro (*Coauthor: Senator McPherson*) (Coauthors: Assembly Members Nation and Wiggins)

DECEMBER 4, 2000

An act relating to oaks, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 31, as amended, Chesbro. ~~Oak Mortality Syndrome and Sudden oak death Syndrome~~ : appropriation.

(1) The Budget Act of 2000 appropriated funds to the Department of Forestry and Fire Protection to be used for various forestry programs throughout the state for the 2000-01 fiscal year.

This bill would appropriate the sum of ~~\$10,000,000~~ *\$10,265,000* to the department, for expenditure in the 2000-01, 2001-02, and 2002-03 fiscal years, *as specified*, in augmentation of a specified amount appropriated to the department for operating expenses in the Budget Act of 2000, to be used for a program to ~~identify, develop, and implement measures designed to address the public safety, environmental, and economic consequences of oak trees injured or killed by Oak Mortality Syndrome or Sudden Oak Death Syndrome, as prescribed. The bill would require that a minimum of \$5,000,000 of those funds be expended by the department for grants to counties for the removal, disposal, and treatment of affected oaks, based on a prioritization and assessment of needs conducted by the department~~ *develop and implement measures designed to prevent, control, and manage the condition known as "sudden oak death," and to perform control work on state and private lands within zones where sudden oak death is occurring, as determined by the State Board of Forestry and Fire Protection. This bill would require the department to use the funds appropriated to take various actions to control the spread of the Phytophthora fungus, to find effective treatments to prevent or eliminate sudden oak death, and to perform, or assist local agencies and private property owners to perform, identification, removal, and appropriate disposal of oak trees that have expired due to sudden oak death* .

(2) The bill would declare that it is to take effect immediately as an urgency statute. Vote: 2/3. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) (1) The sum of ~~ten million dollars (\$10,000,000)~~ *ten million two hundred sixty-five thousand dollars (\$10,265,000)* is hereby appropriated from the General Fund to the Department of Forestry and Fire Protection, for expenditure in the 2000-01, 2001-02, and 2002-03 fiscal years, in augmentation of Item ~~3540-006-0001~~ *3540-001-0001* of Section 2.00 of the Budget Act of 2000, ~~to be used for a program to identify, develop, and implement measures designed to address the public safety, environmental, and economic consequences of trees injured or killed by Oak Mortality Syndrome or Sudden Oak Death Syndrome.~~ (b) ~~Not less than five million dollars (\$5,000,000) of the funds allocated pursuant to subdivision (a) shall be expended by the department for grants to counties for the removal, disposal, and treatment of affected oaks, based on a prioritization and assessment of needs conducted by the department. The department shall give funding priority to grants to counties where Oak Mortality Syndrome and Sudden Oak Death Syndrome have been~~ *to be used to develop and implement measures designed to prevent, control, and manage the condition known as "sudden oak death," and to perform control work on state and private lands within zones where sudden oak death is occurring, as determined by the State Board of Forestry and Fire Protection.*

(2) The department shall use the funds appropriated pursuant to this subdivision to take various actions to control the spread of the Phytophthora fungus, to find effective treatments to prevent or eliminate sudden oak death, and to perform, or assist local agencies and private property owners to perform, identification, removal, and appropriate disposal of oak trees that have expired due to sudden oak death.

(3) The funds appropriated in this subdivision shall be allocated as follows:

(A) Six hundred twenty thousand dollars (\$620,000) for sudden oak death monitoring activities including, but not necessarily limited to, open-space surveys, roadside surveys, aerial surveys, monitoring technique workshops, development of baseline information on the distribution, condition, and mortality rates of oaks in California, and maintaining an up-to-date geographic information system database.

*(B) Four million nine hundred sixty-five thousand dollars (\$4,965,000) for sudden oak death management activities, including, but not necessarily limited to, hazard tree assessment, grants to counties for hazard tree removal pursuant to the process established in subdivision (b), assessment and management of restoration and mitigation options, establishment of demonstration management projects, including green waste treatment facilities in two counties selected by the State Board of Forestry and Fire Protection, and grants to counties for oak tree restoration pursuant to the process established in subdivision (c). The department shall give funding priority to grants to counties where sudden oak death has been confirmed by the department, including, but not limited to, the Counties of Marin, Monterey, Napa, San Mateo, Santa Cruz, Santa Clara, and Sonoma. However, other counties shall also be eligible for grants, based on the department's prioritization and assessment of needs, if the department determines that ~~Oak Mortality Syndrome or Sudden Oak Death Syndrome~~ *sudden oak death* affects oaks in any of those counties.*

(C) Two million dollars (\$2,000,000) for fire prevention activities, including, but not necessarily limited to, increasing or improving initial fire attack capabilities in areas where fire hazard has increased due to the die-off of oak trees stricken by sudden oak death, treatment of vegetation to prevent fire, and assessment of fire risk in heavily impacted areas.

(D) Nine hundred sixty thousand dollars (\$960,000) for research activities, including, but not necessarily limited to, research on forest pathology and Phytophthora ecology, forest insects associated with oak decline, urban forestry and arboriculture, forest ecology, fire management and silviculture, and landscape ecology, epidemiology, and monitoring techniques.

(E) Six hundred sixty thousand dollars (\$660,000) for education activities, including, but not necessarily limited to, support for two education project coordinators, website design and maintenance, and development and distribution of education materials on sudden oak death for homeowners, arborists, urban foresters, park managers, public works personnel, utility crews, recreationists, nursery workers, landscapers, naturalists, and firefighting personnel.

(F) Eight hundred twenty thousand dollars (\$820,000) for regulation activities, including, but not necessarily limited to, nursery surveys and other regulation enforcement activities, diagnostic services, and other public agency coordination efforts.

(G) Two hundred forty thousand dollars (\$240,000) for administrative activities necessary to oversee the activities listed in subparagraphs (A) to (F), inclusive.

(b) The State Board of Forestry and Fire Protection shall grant a portion of the funds allocated pursuant to subparagraph (B) of paragraph (3) of subdivision (a) to impacted counties for the removal of trees that have died or that are dying as a result of sudden oak death. An impacted county may apply to the board for these funds, and shall provide the board with an action plan for removal and disposition of affected trees within its jurisdiction. The board shall approve or deny an affected county's action plan in a timely manner. If the board approves the action plan of an affected county, the board may award a grant to that county. The board shall consider the recommendations of the California Oak Mortality Task Force prior to approving or denying any county action plan, and prior to making any grant award, under this subdivision.

(c) The State Board of Forestry and Fire Protection shall grant a portion of the funds allocated pursuant to subparagraph (B) of paragraph (3) of subdivision (a) to impacted counties for activities designed to restore oak trees in areas that have been impacted by sudden oak death. An impacted county may apply to the board for these funds, and provide the board with an action plan for restoration of affected trees within its jurisdiction. The board shall approve or deny an affected county's action plan in a timely manner. If the board approves the action plan of an affected county, the board may award a grant to that county. The board shall consider the recommendations of the California Oak Mortality Task Force prior to approving or denying any county action plan, and prior to making any grant award, under this subdivision.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

~~—In order to provide needed funds to counties in the state to address the immediate hazards caused by Oak Mortality Syndrome and Sudden Oak Death Syndrome throughout the state, it is necessary that this act take effect immediately.~~

In order to provide funding, at the earliest possible time, to prevent, control, and manage the rapidly spreading condition known as "sudden oak death," it is necessary that this act take effect immediately

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BILL ANALYSIS; SB 116 (Keuhl)**SUMMARY**

This bill would establish criteria and a process for evaluating road construction proposals that affect state parks. In order to gain approval, the process requires findings that the projects are necessary for the operations of the facility and have the least possible impacts on the park.

PURPOSE OF THE BILL

The purpose of this bill is to establish criteria that would limit new road construction or expansion through state parks, or lands that are leased or protected by the Department of Parks and Recreation.

EXISTING LAW

The Coastal Act regulates new development, including road construction, in the coastal zone. Existing law does not provide a specific method for evaluating road construction projects through state parks.

LEGISLATIVE HISTORY

Senator Tom Hayden introduced a similar bill, SB 1277 in 1999. That bill was originally much broader than SB 116. Although SB 1277 was also designed to protect parks from highway construction, an early version of the bill required a 2/3 vote of the Legislature to build a road through a park. A later version of the bill would have also applied to all lands managed by the Department of Fish and Game and the State Coastal Conservancy. In a later version substantially similar to SB 116, SB 1277 passed the Senate but was never taken up in the Assembly. SB 116 is limited to state parks.

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BACKGROUND

Population pressures and the growing popularity of state parklands and facilities have resulted in an increased use of state parks facilities and a corresponding need for infrastructure improvements to accommodate the public. Because parks are generally considered to have special and valuable natural resources worthy of protection, the need to establish criteria for now road construction has created the need for this bill.

ANALYSIS

Indiscriminant road construction in the state's parks can fragment wildlife habitat and detract from the human experience of the natural world. Bill proponents have assembled a list of 18 state and local road projects in various stages of planning. At least three of these involve state parks located in the coastal zone; San Onofre, Crystal Cove and Montera State Park.

This bill would still allow the Department of Parks to approve roads that are necessary for park operations, or for access by fire departments and utilities. Road construction may also be approved when the Secretary for Resources and the Secretary of Business, Transportation and Housing jointly determine that the road would not harm or jeopardize current uses of the affected property, and that any significant impacts of the construction on the property are fully mitigated.

But roads that are not necessary for park operations, such as toll roads or roads that harm the property or cannot be fully mitigated could be denied based on the criteria set forth in the bill.

This bill would create another level of review for road construction in environmentally sensitive areas, thus sharing the regulatory burden now carried by the commission and local government. The bill elevates initial approvals to a more appropriate statewide level.

SUPPORT/OPPOSITION

Support:

American Federation of State, County, and Municipal Employees AFL-CIO, Amigos de Bolsa Chica, Bay Area Open Space Council, California League of Conservation Voters, California Native Plant Society, California State Parks Foundation, California State Parks Rangers Association, California State Supervisory Peace Officers Association, _ Cuyamaca Rancho Foundation, Endangered Habitats League, Friends of Harbors, Beaches and Parks, Friends of the Santa Clara River, Hills for Everyone, International Society for the Preservation of the Tropical Rainforest, Palomar Audubon Society, Planning and Conservation League, National Audubon Society-California, National Resources Defense Council, Orange County Coastkeeper, Palos Verde/South Bay Audubon Society, Sierra Club, California Surfrider Foundation-San Clemente Chapter, The Laguna Greenbelt, The Wildlands Conservancy

Opposition:

California Building Industry Association, California Chamber of Commerce, City of Anaheim, City of Mission Viejo, City of San Juan Capistrano, Orange County Transportation Agency (unless amended), Orange County Division, League of California Cities, San Joaquin Tollroad Agency and Transportation Corridor Agencies

RECOMMENDED POSITION

Staff recommends the Commission **Support** SB 116.

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BILL LANGUAGE ATTACHED

BILL NUMBER: SB 116 AMENDED
BILL TEXT

AMENDED IN SENATE MARCH 20, 2001

INTRODUCED BY Senator Kuehl (*Coauthors: Assembly Members Aroner, Koretz, and Pavley*)

JANUARY 24, 2001

An act to add Section 5012.3 to the Public Resources Code, relating to state property.

LEGISLATIVE COUNSEL'S DIGEST

SB 116, as amended, Kuehl. Department of Parks and Recreation: roads: construction and improvements.

Existing law provides for the administration, operation, and maintenance of units of the state park system. Existing law also provides for the protection and preservation of ecological reserves and coastal lands in the state.

This bill would prohibit a state or local agency from constructing, or approving the construction of, any public road, or from making any improvement to an existing road, that substantially increases vehicular traffic capacity, in or through any property under the jurisdiction of the Department of Parks and Recreation. This prohibition would not apply if the department determines, among other things, that the road project includes all feasible planning to minimize harm to the property, or if the Secretary of Business, Transportation and Housing and the Secretary of the Resources Agency jointly make prescribed determinations.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 5012.3 is added to the Public Resources Code, to read:

5012.3. (a) As used in this section, the following definitions apply:

(1) "Local agency" means a city, county, city and county, district, district association of governments, joint powers authority, public agency, political subdivision, or public or municipal corporation in this state.

(2) "Road" means a highway, street, toll road, or toll highway, as defined by Sections 360, 590, and 611 of the Vehicle Code.

(3) "State agency" includes any state department, division, bureau, board, commission, or any other office within a state agency.

(b) No state or local agency may construct, or approve the construction of, any road, or make any improvement to an existing road, that substantially increases vehicular traffic capacity in or

through any property under the jurisdiction of the department, regardless of whether the property is held in fee simple, is leased, or is otherwise preserved under a conservation easement. This prohibition does not apply if either of the following conditions are met:

(1) The department determines that the road project includes all feasible planning to minimize harm to the property, and further determines that one of the following applies:

(A) The road is necessary for the operation, maintenance, or use of the property.

(B) The road is necessary for the prevention or suppression of fires occurring on the property.

(C) The road is necessary for the construction, operation, or maintenance of utilities located on the property.

(2) The Secretary of Business, Transportation and Housing and the Secretary of the Resources Agency jointly determine all of the following:

(A) That the road would not likely jeopardize , *or would improve*, the current uses of the affected property.

(B) That the road project includes all *reasonably* feasible planning to minimize harm to the property.

(C) That any *significant* impacts of the construction on the property are fully mitigated.

(c) Any costs incurred by the state as a result of making the determinations set forth in subdivision (b) may be recovered by fees imposed on the project proponents.

(d) (1) A person or class of persons may file a civil action to enjoin any other person or entity, including a state agency or any other governmental entity or agency, that is alleged to be in violation of this section.

(2) Any civil action brought pursuant to paragraph (1) may be brought in the superior court in the county in which the violation occurs.

(3) Any injunctive relief provided pursuant to this subdivision shall not restrict any other right that a person or class of persons may have under a statute or common law, including the right to seek other legal remedies against the state —, or a local government.

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BILL ANALYSIS; SB 516 (Johnson)**SUMMARY**

This bill would allow the County of Orange to continue to implement the certified LCP for the Irvine/Newport Coast following the area's annexation by the City of Newport Beach. This bill would take effect immediately as an Urgency statute.

PURPOSE OF THE BILL

The purpose of this bill is to allow the City of Newport Beach to annex a portion of the Irvine/Newport Coast and provide services to existing and planned new development, while continuing to allow the County to implement the certified LCP for the purpose of permitting, enforcement, amendment, etc.

EXISTING LAW

The Coastal Act currently requires local governments with certified LCPs to assume primary permitting authority for development in the coastal zone, as specified. The Coastal Act makes no reference to allowing or disallowing the land use designations and policies of a certified LCP to "run with the land" if the area is annexed by another jurisdiction.

BACKGROUND

The Irvine/Newport Coast segment of Orange County's LCP was certified by the Commission in 1988. A subsequent amendment to the LCP was certified in 1996. A periodic review of the LCP, due in 1993, has not yet been conducted. The Irvine/Newport Coast includes about 10,000 acres of land between Newport Beach and Laguna Beach. The LCP allows for a maximum of 2,600 residential dwelling units, 2,150 overnight accommodation rooms, 300,000 sf of visitor serving/commercial space and recreation or conservation easements over approximately 6,500 acres.

The City of Newport Beach intends to annex a portion of the area included in the Irvine/Newport Coast LCP, as well as additional land outside the coastal zone (Newport Ridge). The area to be annexed by the city is included in the City of Newport Beach's sphere of influence (future city limit boundary) which divides the LCP area roughly in half.

The City does not have a certified LCP, however the City Council passed a resolution on 3/28/01 stating its intent to prepare for an LCP for certification by the Commission. City representatives state that the city does not currently have the personnel nor the expertise to administer the Irvine Coast LCP, which includes a portion of the County's NCCP.

The City will still be required to process an annexation application through the Orange County LAFCO. The City has agreed to reimburse the County for administrative costs associated with LCP implementation.

ANALYSIS

While the Coastal Act is silent on the issue of annexation, this bill should only be considered in the context of this unique circumstance, and not used as a template for annexations elsewhere in the state. The likelihood of other cities choosing to relinquish coastal land use authority to another local government while providing urban services is slight.

This model of LCP implementation could create ambiguities for the public, applicants and the Commission. Future amendments to the LCP, initiated by the County, may not necessarily be supported by the City. Likewise, the City may desire future amendments that may not be acceptable to the County. When the Commission undertakes its periodic review of the LCP, its recommendations will be considered and acted upon by the county, even though the impacts of those recommended changes will be borne out in the city.

However, this bill will also allow for the entire planning area to remain intact under a single LCP, administered by a single entity (the County of Orange). The city can better provide public services than the county, such as water, sewer and emergency services appropriate to the area's buildout. The City and County have reached agreement on how to coordinate planning and permitting activities.

While this proposed bill does not address the Coastal Act goal of requiring local governments to implement their own LCPs, it does allow a previously certified LCP to remain in place.

SUPPORT/OPPOSITION

Support:

City of Newport Beach

Opposition:

None on file

RECOMMENDED POSITION

Staff recommends the Commission adopt a **Neutral** position on SB 516.

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BILL TEXT ATTACHED

BILL NUMBER: SB 516 AMENDED
BILL TEXT

AMENDED IN SENATE MARCH 27, 2001

INTRODUCED BY Senator Johnson (Coauthor: Assembly Member John Campbell)

FEBRUARY 22, 2001

An act to add Section 30519.2 to the Public Resources Code, relating to coastal planning, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 516, as amended, Johnson. Local coastal programs.

(1) The California Coastal Act of 1976 requires that, after a local coastal program is certified and all implementing actions within the area affected become effective, the California Coastal Commission ceases to exercise any development review authority over any new development proposed within the area affected and delegates that authority to the local government that is implementing the local coastal program.

This bill would require the County of Orange to exercise all development review authority pursuant to the certified local coastal program over those parcels and areas within the county ~~and described~~, generally known as the ~~Annexed Area~~ "Annexed Area," upon the effective date of any reorganization or annexation by the City of Newport Beach that includes all or part of the Annexed Area.

The bill would authorize the City of Newport Beach, at any time after the effective date of the bill, if it elects to assume coastal management responsibility for the Annexed Area, to begin preparation of a local coastal program for that area, and to adopt provisions of the County of Orange's certified local coastal program that would apply to the Annexed Area. The bill would require that specified statutes and regulations governing procedures for the preparation, approval, and certification of a local coastal program by the California Coastal Commission be applicable to the city's adoption of a local coastal program for the Annexed Area. The bill would require the City of Newport Beach, if it decides to apply for certification of a local coastal program for the Annexed Area pursuant to those provisions, upon the effective date of that certification, to exercise all of the authority under the act granted to a local government with a certified local coastal program, and would provide that the aforementioned provisions requiring the County of Orange to exercise all development review authority pursuant to the certified local coastal program over those parcels and areas within the county defined as the Annexed Area shall become inoperative.

(2) The bill would state the findings and declarations of the Legislature that, due to unique circumstances applicable to the County of Orange, a statute of general applicability cannot be made applicable.

(3) This bill would declare that it is to take effect immediately as an urgency statute. Vote: 2/3. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 30519.2 is added to the Public Resources Code, to read:

30519.2. (a) This section shall only apply to ~~those parcels and areas within the County of Orange as of January 1, 2001,~~ *territory located within the County of Orange generally known as the "Annexed Area."* For purposes of this section, "Annexed Area" means the territory consisting of approximately 5,450 acres bounded to the north by ~~State Route 73, to the east by the inland portion~~ *the inland boundary of the coastal zone, to the east by the western boundary of Crystal Cove State Park, to the south by the state's outer limit of jurisdiction over the Pacific Ocean, and to the west by the city limits of the City of Newport Beach* ~~(the Annexed Area).~~

(b) This section shall take effect upon the effective date of ~~any reorganization or annexation that includes all or part of the Annexed Area.~~ *the annexation of all or part of the Annexed Area by the City of Newport Beach.*

(c) Upon ~~issuance~~ *the recordation* of a certificate of completion of any ~~reorganization or annexation affecting all or part of the Annexed Area~~ *reorganization or change of organization that results in the annexation of all or part of the Annexed Area by the City of Newport Beach,* both of the following shall occur:

(1) The local coastal program applicable to any ~~portion~~ *part* of the Annexed Area shall continue to be the certified local coastal program for the County of Orange.

(2) The County of Orange shall continue to exercise all development review authority described in Section 30519, as delegated to it by the commission pursuant to the certified local coastal program for the County of Orange for the Annexed Area.

(d) (1) If, at any time after the effective date of this section enacted during the 2001 portion of the 2001-02 Regular Session, the City of Newport Beach elects to assume coastal management responsibility for the Annexed Area, the city may begin preparation of a local coastal program for that area. The City of Newport Beach may adopt provisions of the County of Orange's certified local coastal program that shall apply to the Annexed Area. All of the procedures for the preparation, approval, and certification of a local coastal program set forth in this chapter, and any applicable regulations adopted by the commission, shall apply to the city's adoption of a local coastal program for the Annexed Area.

(2) If the City of Newport Beach decides to apply for certification of a local coastal program for the Annexed Area pursuant to paragraph (1), upon the effective date of that certification, the city shall exercise all of the authority under this division granted to a local government with a certified local coastal program, and as of the date of that certification, subdivisions (b) and (c) shall become inoperative.

SEC. 2. The Legislature finds and declares that, due to the unique circumstances applicable to the ~~parcels and areas~~ *territory generally known as the Annexed Area* within the County of Orange relating to the certified local coastal program for the county ~~and any portion of the Annexed Area~~, a statute of general applicability cannot be made applicable within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The City of Newport Beach, in processing a December 2001 reorganization of an area within the coastal zone, seeks to preserve *In deciding to annex territory in the coastal zone, as defined in Section 30103 of the Public Resources Code, generally known as the "Annexed Area", the City of Newport Beach seeks to preserve* the open-space dedications and entitlements protected by an existing certified local coastal program. At the same time, in order to effectively fund *police and fire protection services among* municipal services to the area, the city needs the property tax revenues from the Annexed Area to be allocated to the city immediately after December 10, 2001. *city for the 2002-03 fiscal year.*